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When The Government Is Involved: Overview of CA False Claims

- Any person who knowingly submits a false claim for payment or approval to a state or political subdivision is liable for damages sustained due to their acts.
- The Attorney General has the authority to bring a civil action against a person who submits a false claim or record to the government.
- The prosecuting authority has the right to bring a false claims action involving political subdivision funds and to intervene in a false claims action brought by the Attorney General.
- An individual may bring a qui tam action under the False Claims Act.
- An employer cannot make a rule preventing an employee from disclosing information in furtherance of a false claims action.
- An employer may not retaliate or take action against an employee because of lawful acts in furtherance of a false claims action.
What Is A False Claim?

- The various types of false claims are enumerated in Section 12651(a)(1-8):
  1. Presenting a false claim for payment or approval to an officer or employee of the state or of any political subdivision;
  2. Using a false record or statement to get a false claim paid or approved;
  3. Conspiring to defraud the state or a political subdivision by getting a false claim allowed or paid;
  4. Being in possession of state or political subdivision property, and knowingly delivering less property than the amount owed;
What Is A False Claim? (continued)

5. Being authorized to deliver certification of receipt of property to be used by state or political subdivision, and knowingly delivering a receipt that falsely represents the property to be used;

6. Knowingly buying or receiving public property from any person who lawfully may not sell it;

7. Knowingly using a false statement or record to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a political subdivision;

8. Being a beneficiary to an inadvertent false claim, later discovering the falsity of the claim, and failing to disclose the false claim.
Practical Examples Of False Claims

- False change orders
- Substituting goods
- Falsely certifying job progress
- Buying property off the job site
- Submitting marked-up invoices
- Other invoice tampering
Remedies Under The False Claims Act

- A person who engages in an act prohibited by Section 12651 is liable for three times the amount of damages which the state or political subdivision sustains. Section 12651(a).

- A person who engages in an act prohibited by Section 12651 is liable for costs of the suit. Section 12651(a).

- A person who violates the FCA may also be liable for not less than $5,500 and up to $11,000 for each violation. Section 12651(a).
Who May Bring A False Claims Civil Action?

- **Attorney General**
  - If the Attorney General finds that a person has violated or is violating Section 12651, the Attorney General may bring a civil action against that person. Section 12652(a)(1).
Who May Bring A False Claims Civil Action? (continued)

- **Prosecuting Authority**
  - A “prosecuting authority” is the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of a particular political subdivision. Section 12650(b)(7).
  - A prosecuting authority may bring a false claims action or intervene in a false claims action brought by the Attorney General. Section 12652(a)(3); (b)(1).

- **Individual (Qui Tam Action)**
  - An individual has the authority to bring a false claims action under Section 12652(c)(1).
Attorney General and Prosecuting Authority Actions

- **Attorney General**
  
  - If the Attorney General brings a civil action, the Attorney General must serve a copy of the complaint on the prosecuting authority. Section 12652(a)(2).
  
  - The prosecuting authority may intervene in the Attorney General’s action within 60 days. Section 12652(a)(3).
Attorney General and Prosecuting Authority Actions (continued)

- Prosecuting Authority
  - If the prosecuting authority brings a civil action, it must serve a copy of the complaint on the Attorney General. Section 12652(b)(2).
  - Within 60 days of receipt of the complaint, the Attorney General may either inform the court that it shall assume primary responsibility over the case or notify the court that it declines to take over the action. Section 12652(b)(3)(A-B).
Qui Tam Actions

- A person may bring a civil action on behalf of the state if any state funds are involved, or on behalf of a political subdivision if exclusively political subdivision funds are involved. Section 12652(c)(1).

- The qui tam plaintiff must serve a copy of the complaint on the Attorney General. Section 12652(c)(3).

- **Cases Involving State Funds:**
  - Within 60 days the Attorney General must notify the court that it intends to proceed with the action or that it declines to take over the action. Section 12652(c)(6)(A-B).
Qui Tam Actions (continued)

- **Cases Involving Political Subdivision Funds:**
  - Within 15 days the Attorney General must forward a complaint alleging violations involving exclusively political subdivision funds to the appropriate prosecuting authority. Section 12652(c)(7)(A).
  - Within 45 days the prosecuting authority must notify the court that it intends to proceed with the action or that it declines to take over the action. Section 12652(c)(7)(D)(i-ii).
Employer Interference With Employee Disclosures

- An employer may not adopt a rule preventing an employee from disclosing information to a governmental entity in furtherance of the false claims action. Section 12653(a).

- **Retaliation:** An employer may not retaliate against an employee because of lawful acts done “by the employee on behalf of the employee or others” in disclosing information to a governmental entity or in furthering a false claims action. Section 12653(b).
  - Acts of retaliation include discharge, demotion, suspension, threatening, harassment, denial of promotion to, or in any other manner discriminating against an employee in terms and conditions of employment. Section 12653(b).
Employer Interference With Employee Disclosures (continued)

- An employer who retaliates against an employee is liable for all relief necessary to make the employee whole, including reinstatement, two times the amount of back pay, interest on the back pay, compensation for any special damage, punitive damages, and litigation costs and attorneys’ fees. Section 12653(c).
Statute of Limitations

- Pursuant to Section 12654 a civil false claims action may not be filed
  - More than three years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or,
  - No more than 10 years after the date on which the violation of Section 12651 is committed.