

Checking In: Jason Zuckerman, Zuckerman Law

by Practical Law Labor & Employment

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Q&A with Practical Law Labor & Employment Advisory Board member Jason Zuckerman of Zuckerman Law.

Name: Jason Zuckerman

Title: Principal

Organization Name: Zuckerman Law

Education: 2000: J.D., University of Virginia School of Law; 1996: B.A., Georgetown University

Career in Brief:

After law school, I worked at a large firm for four years focused on the defense of employment claims, primarily whistleblower retaliation cases. Since 2004, I have worked at various law firms representing whistleblowers. From 2011-2013, I was privileged to serve as part of the leadership team at the US Office of Special Counsel (OSC) during the Obama Administration. OSC is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act.

2014-present: Principal, Zuckerman Law, representing whistleblowers in whistleblower rewards and whistleblower protection actions.

2011-2013: Senior Legal Advisor to the Special Counsel at the US Office of Special Counsel, the federal agency charged with protecting whistleblowers in the federal government. I also served on the DOL's Whistleblower Protection Advisory Committee, which makes recommendations to improve OSHA's enforcement of federal whistleblower protection laws.

2008-2011: Principal, The Employment Law Group.

2005-2008: Principal, Zuckerman Law.

2004-2005: Clifford & Garde, LLP, Associate, Labor & Employment.

2000-2004: Shaw, Pittman, Potts & Trowbridge (now Pillsbury Winthrop Shaw Pittman), Associate, Labor & Employment.

Have any recent legal or market developments had a significant impact on your practice?

As for legal developments, the success of federal whistleblower reward programs has spurred more whistleblowers to come forward and significantly enhanced the ability of the SEC, CFTC, and DOJ to combat fraud and protect investors and the public fisc. Since the inception of the SEC whistleblower program, the SEC has paid more than \$1.3 billion in awards to whistleblowers for providing information that led to successful enforcement actions, and enforcement actions brought using information from whistleblowers have resulted in more than \$6.3 billion in total monetary sanctions. Qui tam actions brought under the False Claims Act have recovered more than \$64 billion for the taxpayers since 1986.

Whistleblower programs that incentivize integrity are expanding, including the new FinCEN and OFAC whistleblower program authorizing awards for disclosures about money laundering and sanctions violations. As a result of these programs, my firm is representing whistleblowers worldwide concerning a broad range of violations. This forces us to keep up with developments in many areas of white collar criminal enforcement and to be very selective about the matters that we handle. For example, more than 12,000 whistleblowers filed complaints with the SEC Office of the Whistleblower in FY22. Due to resource constraints at federal agencies, we focus on claims that are likely to get traction.

Are there any changes on the horizon that you think will significantly affect your practice?

Both at the federal and state level, legislation and agency rulemaking and enforcement actions are reducing contractual barriers to whistleblowing. Examples include the NLRB's recent *McLaren Macomb* decision, the SEC's enforcement of its anti-impedance rule (Rule 21F-17), and recently enacted state laws limiting non-disparagement and nondisclosure provisions, such as Washington's "Silenced No More" law.

In the whistleblower protection area, states are increasingly enacting strong whistleblower protection laws or updating weak laws, such as New York's significant expansion of its whistleblower protection statute in 2021. As many federal whistleblower protection laws were enacted just in the past two decades, courts continue to grapple with fundamental issues about the scope of protection, including what constitutes an actionable adverse action, whether duty speech is protected, the degree of specificity required to prove notice of protected conduct, what level of protection should be afforded to gatekeepers, and whether retaliatory intent is required to prove contributing factor causation.

As for my False Claims Act practice, the Supreme Court's recent decision in *US ex rel. Schutte v. SuperValu, Inc.* was a big win for relators, but there will likely be further litigation about what constitutes reckless disregard of the truth or falsity of the information (that is, what must the whistleblower demonstrate to prove that a defendant is "conscious of a substantial and unjustifiable risk" that the claims they are submitting are false).

What one piece of advice would you give a junior attorney considering specializing in your area of law?

Take the time to get well-versed in federal and state whistleblower rewards and protection laws and try to monitor all judicial opinions and agency orders construing these laws. Whistleblower protection laws can provide a potent remedy, but navigating the maze of federal, state, and common law claims is challenging. It is crucial to be familiar with all of the available remedies to your client so that you can develop an effective strategy to achieve the optimal outcome and to avoid going down a path that forecloses an important remedy.

What do you like most about your job?

Guiding my clients through perilous circumstances and finding creative solutions to maximize their recovery while mitigating their exposure to any potential liability.

When whistleblowers contact me, there is a lot on the line for them, and many have suffered retaliation for reporting fraud or other wrongdoing internally or to the government. Leveraging whistleblower reward and protection laws to help them do the right thing and achieve a successful outcome is very satisfying work but requires a lot of patience. Some of the whistleblower rewards matters can last five to ten years, or longer.

I also feel privileged to work on matters that vindicate the public interest. For example, some of the whistleblowers that my firm has represented helped the SEC stop Ponzi schemes and other investment frauds and returned funds to harmed investors. In my False Claims Act practice, cases I have worked on returning funds to the public fisc.

What do you like to do on your day off?

Travel with my family, sailing, or hiking.

Why did you decide to be part of the Practical Law Labor & Employment Advisory Board?

It is a great opportunity to learn from distinguished labor and employment practitioners and to keep abreast of new developments in labor and employment law.

Has your firm worked on any notable pro bono projects recently?

I have an active pro bono practice focused on whistleblower advocacy, which includes drafting comments to proposed agency rules governing whistleblower rewards or whistleblower protection programs, lobbying for the enactment of federal and state whistleblower rewards and protection laws, and drafting amicus curiae briefs in whistleblower cases at the DOL Administrative Review Board, federal circuit courts of appeals, and the US Supreme Court. Most recently, I helped draft an amicus curiae brief for Senators Grassley and Wyden in the *Murray v. UBS SOX* case that the Supreme Court will decide next term. In conjunction with the Government Accountability Project, I drafted a petition for rulemaking at the DOL that prompted OSHA to issue guidance restricting settlement terms that impermissibly restrict or discourage protected activity.

In an increasingly competitive legal market, what strategies do you employ to generate business and retain clients?

My firm consistently strives to exceed our clients' expectations and provide top notch customer service, which has helped generate referrals from former clients. And while we are zealous advocates for our clients, we

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always aim to engage in constructive and cordial dialogue with opposing counsel, which has helped generate referrals from colleagues in the employment defense bar. In addition, we do a lot of speaking and writing about whistleblower rewards and protection laws, including some resources for Practical Law. I enjoy keeping up with developments in whistleblower law and writing about those developments.

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