

# Ohio District Court Grants Employer Summary Judgment on SOX Whistleblower Claims

**Proskauer Whistleblower Defense** on **March 6, 2023**

On February 15, 2023, the U.S. District Court for the Southern District of Ohio granted a defendant-employer's motion for summary judgment on SOX whistleblower retaliation claims, holding that the plaintiff failed to establish the elements of a SOX claim, and that the company demonstrated that it would have discharged her in the absence of any protected activity. [Harmon v. Honeywell Intelligrated](#), No. 19-cv-670.

## Background

Plaintiff, a Data Entry Associate, alleged that she was harassed and retaliated against after she complained about "unethical accounting practices" in the company. According to Plaintiff, her complaints led to an "organized group" trying to "get rid of [her]" and contributed to a hostile work environment that ultimately led to her taking an extended leave of absence. Plaintiff alleged that the harassment continued while she was on leave, when she was denied leave benefits to which she was entitled, and culminated with her termination one month after she filed a whistleblower retaliation complaint with OSHA. She subsequently filed suit, alleging that various claims under state and federal law, including whistleblower retaliation claims under SOX.

## Ruling

The court granted the company's motion for summary judgment on Plaintiff's SOX claim, holding that Plaintiff failed to provide admissible evidence to establish a *prima facie* case of whistleblower retaliation. First, Plaintiff's claims of retaliation during her employment were time-barred because she waited until after the 180-day statutory period expired to file an administrative complaint with OSHA, as required under the statute. Second, Plaintiff failed demonstrate that hat she was wrongfully denied short term leave benefits in retaliation for her complaints because that decision was not made by the employer, but by a third-party benefits administrator. Finally, Plaintiff failed to provide sufficient evidence that her discharge was retaliatory because the company demonstrated that it had already put into motion the necessary steps to terminate her employment *prior* to the SOX complaint filing because she had already been absent from work more than 18 months.

## Implications

This decision underscores the importance of documenting in real time the justifications for any employment actions so that employers can demonstrate *when* and *why* the decisions were made should they be challenged.

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