



California Corporate & Securities Law

California's Whistleblower Hotline

Posted In [Corporate Governance, Enforcement & Investigations](#)

11-4-2010

Yesterday, the Securities and Exchange Commission proposed [rules](#) for implementing the whistleblower provisions of the Dodd–Frank Act. That act established a whistleblower program that requires the SEC to pay a bounty to eligible whistleblowers who voluntarily provide the SEC with original information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action. This new program is to be subject to rules adopted by the SEC.

Some have criticized the bounty provision of the Dodd–Frank Act as undermining efforts by companies to encourage internal reporting. Doubtless reacting to this criticism, the SEC claims that it has “included provisions in the proposed rules intended not to discourage whistleblowers who work for companies that have robust compliance programs to first report the violation to appropriate company personnel . . .”.

Interestingly, the California legislature had no such compunctions about bypassing internal compliance programs when it enacted legislation in 2003 that required the Attorney General to maintain a whistleblower hotline to receive calls from persons “who have information regarding possible violations of state and federal statutes, rules or regulations or violations of fiduciary responsibility by a corporation or limited liability company to its shareholders, investors or employees”. Cal. Labor Code § 1102.7(a). S.B. 777 (Escutia), Stats. 2003, c. 484, § 4. This legislation, which followed the enactment of the Sarbanes–Oxley Act, was passed with the support of public and private unions, plaintiffs’ lawyers (Consumer Attorneys of California), and Consumers Union.

The bill included a specific legislative finding and declaration that “it is the public policy of the State of California *to encourage* employees to notify an appropriate government or law enforcement agency when they have reason to believe their employer is violating laws enacted for the protection of corporate shareholders, investors, employees, and the general public”. Stats. 2003, c. 484, § 1.

In future posts, I will discuss some of the other provisions of this legislation, including employer responsibilities and liabilities and the results of my Public Records Act request to the California Attorney General regarding the whistleblower hotline.

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