

Learn about Section 1519

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By Zachary A.P. Oubre

If your company interacts with the federal government, business just got more complicated. In 2002, Congress passed 18 U.S.C. § 1519 as part of the Sarbanes-Oxley Act to make it easier to prosecute Wall Street fraud and cover-ups by eliminating the need for a formal investigation. Until recently, federal prosecutors didn't typically use the statute to prosecute folks on Main Street.



Increased use of the statute could have a dramatic effect on the day-to-day workings of any small to large business. Section 1519 criminalizes any attempt to “impede, obstruct, or influence ... the proper administration of a matter ... in contemplation of, or in relation to, a matter or investigation.” Sound broad enough to cover virtually anything? Some federal prosecutors agree. Recent cases have found corporate employees guilty after failing to “tell the truth, the whole truth” to in-house counsel well before a federal investigation ever began. Criminal charges were even brought for as little as changing the password on a personal home computer.

The practical effect is twofold: Section 1519 may deputize anyone conducting an internal company investigation. Conversations with in-house counsel could be treated as if they were with a U.S. attorney. Also, Section 1519 may apply to federal agencies. If your company utilizes federal contracts or programs, be careful. Inconsistent document preservation or incomplete information could be viewed as an attempt to impede, obstruct, or influence federal administration, with a penalty of up to 20 years in prison.

Thankfully, courts still require wrongful intent. So, good faith reliance on counsel and consistent implementation of internal policies have been successful defenses.

But why spend the money and time defending a criminal investigation? Prevent the indictment by learning from others' mistakes: If your business has a procedure for internal investigation or document retention, use it the same way every time. If you don't, work with outside counsel to create one. If your company undertakes an internal investigation, consider using outside counsel to avoid in-house deputies.

Credible internal investigations are still a great tool for every business. Most regulators, including the Department of Justice, have policies that promote internal investigations and cooperation with federal authorities. Companies shouldn't be dissuaded from looking into a problem before it becomes a crisis. They just need to know Section 1519.

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