

June 15, 2016

June Marks Upsurge in SEC Whistleblower Awards

On June 9, 2016, the SEC announced a \$17 million whistleblower award to “a former company employee whose detailed tip substantially advanced the agency’s investigation and ultimate enforcement action.” The press release is available [here](#). This is the second-largest award the SEC has issued since the SEC’s whistleblower program began in 2011.

The SEC has awarded whistleblowers over \$26 million in the last month alone. The SEC’s other recent awards include:

- \$450,000 to two individuals “that led the agency to open a corporate accounting investigation and for their assistance once the investigation was underway.” ([May 20, 2016 Press Release](#))
- \$5 million–\$6 million to a former company insider “whose detailed tip led the agency to uncover securities violations that would have been nearly impossible for it to detect but for the whistleblower’s information.” (The third-largest whistleblower award at the time.) ([May 17, 2016 Press Release](#))
- \$3.5 million “to a company employee whose tip bolstered an ongoing investigation with additional evidence of wrongdoing that strengthened the SEC’s case.” ([May 13, 2016 Press Release](#))
- \$275,000 for information that led to two separate actions. ([April 5, 2016 Order](#))
- \$2 million to three individuals. The whistleblower who provided the original information that prompted the SEC’s investigation and provided information throughout the investigation received \$1.8 million, while the two individuals who provided information after the investigation began each received \$65,000. ([March 8, 2016 Press Release](#))

The apparent increase in the number of awards coincides with an increase in the number of “tips.” The number of whistleblower reports to the SEC has increased each year since the program’s inception. The 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program reports that there were 3,923 whistleblower reports to the SEC in Fiscal Year 2015, which is an increase of 303 (8.3%) over 2014.

As the SEC’s whistleblower program continues to mature, corporate counsel and company executives should be mindful of several considerations. First, it is important to remember that virtually every company employee may qualify as a whistleblower¹. As Andrew Ceresney, director of the SEC’s Division of Enforcement explained in the June 9 press release, “Company insiders are uniquely positioned to protect investors and blow the whistle on a company’s wrongdoing by providing key information to the SEC so [the SEC] can investigate the full extent of the violations[.]”

Second, employers must ensure that they take no action to impede an employee from communicating with the SEC about a possible securities law violation². This includes requiring employees to sign confidentiality agreements that could be read to discourage employees from reporting violations to the SEC. Last year, the SEC initiated its first enforcement action against a company for using “improperly restrictive language” in confidentiality agreements with the potential to stifle the whistleblowing process. The SEC explained that “any company’s blanket prohibition against witnesses discussing the substance of [an] interview has a potential chilling effect on whistleblowers’ willingness to report illegal conduct to the SEC.”³

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Third, public companies must also not fire, demote, suspend, or harass an employee who provides information to the SEC⁴. Whistleblowers who suffer from employment retaliation may sue for reinstatement, double back pay, litigation costs, and attorney's fees.

Fourth, public companies should develop and maintain an effective whistleblower hotline that is an integral part of the company's compliance and ethics program. Employees should be incentivized and encouraged to use the company hotline first rather than going directly to regulators before issues can be properly vetted and addressed internally.

Finally, public companies should investigate internal whistleblower allegations on a timely basis, specifically within 120 days under certain circumstances. Failure to do so could give SEC whistleblower status to persons generally disqualified as whistleblowers, such as internal auditors, public accountants, or outside consultants⁵.

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¹ Individuals with compliance or ethical responsibilities, including attorneys, officers and directors, internal auditors, and accountants, may become whistleblowers under certain circumstances. See CFR §240.21F-4(b)(4)(v).

² See CFR §240.21F-17.

³ SEC Press Release 2015-54 ([April 1, 2015](#)).

⁴ See 15 U.S.C. §78u-6(h)(1).

⁵ See CFR §240.21F-4(b)(4)(v).