

The Chill is Gone: SEC Wants Unfettered Whistleblowers

September 28, 2015

The SEC continues its efforts to support whistleblowers. The whistleblower program promulgated by the Commission under the Dodd-Frank Act offers rewards to individuals who report securities law violations. As we have reported ("Employers Warned: Hands Off Whistleblowers" in the Summer 2013 *Expect Focus*), the SEC has instructed companies to eschew employment agreements that could inhibit the reporting of corporate misconduct. In April, the SEC went a step further, bringing its first enforcement action based on restrictive language in confidentiality agreements. In settling the case, KBR, Inc. agreed to a \$130,000 penalty and committed to revise its agreements to make clear that employees may report misconduct without prior approval or retaliation. The company had required witnesses in internal investigations to sign statements containing language threatening discipline, including termination, if the witnesses discussed the matters with third parties without prior approval. Because the SEC's investigations covered potential securities law violations, the agreements violated Rule 21F-17, which bars companies from hindering employees from reporting such violations. The SEC cited no evidence that KBR actually prevented any employees from contacting the SEC. Andrew Ceresney, the SEC's Director of Enforcement, explained that the agreements at issue "potentially discouraged employees from reporting securities violations to us." He added, "We will vigorously enforce this provision." **Clearly, companies may need to review their existing and historical employment and severance agreements to ensure they do not chill whistleblowing.** Comparable concerns apply when companies make written or oral confidentiality requests as part of internal investigations. At the same time, we hope the SEC will allow companies to continue to prohibit unauthorized disclosure of privileged information, trade secrets, and other confidential information that is not necessary to substantiate a reported securities violation. Protecting such interests will require careful work by companies and their counsel seeking to avoid KBR's fate.

Related Practices

[Securities Litigation and Enforcement](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.