

CLIENT ALERT

Navigating Compensation Governance

SEC Cracks Down on Violations of Whistleblower Protection Rules

The SEC has imposed \$3 million in civil penalties against seven companies for violations of the whistleblower protection rules.

The SEC action serves as a reminder that companies should confirm that their employment and separation agreements comply with the whistleblower protection rules.

Background on Whistleblower Protection Rules

The 2010 Dodd-Frank Act established the whistleblower protection program to achieve the following objectives:

- Encourage individuals (i.e., whistleblowers) to report possible securities law violations through the use of financial incentives, which are paid when information provided to the SEC leads to a successful enforcement action;
- Prohibit employers from taking any action that could impede a whistleblower from communicating directly to the SEC, including by enforcing or threatening to enforce a confidentiality agreement; and
- Prohibit any form of retaliation by an employer against a whistleblower.

Over the last ten years, the SEC has brought numerous enforcement actions against violators and imposed and collected millions of dollars in fines (see [Meridian Client Update dated September 28, 2016](#) and [Meridian Client Update dated October 27, 2023](#)).

SEC Imposes \$3 Million in Civil Penalties Against Seven Companies

Earlier this month, the SEC announced enforcement actions against seven companies finding the following contractual provisions violated the whistleblower protection rules:

- Prohibition on employees from communicating directly with the SEC about a possible securities law violation
- Requirement that employees waive their rights to receive whistleblower awards for participating in an investigation by a governmental agency
- Prohibition on disclosure of confidential information except to the extent legally compelled by court order or required by law
- Requirement of prior notice to the company before disclosure of confidential information to government

The SEC imposed fines ranging from \$19,500 to \$1.386 million on the subject companies for such violations.

Meridian Comment: Corporate boards and senior management should review employment and separation agreements to ensure that they would be found compliant with the whistleblower protection rules given these latest SEC enforcement actions, paying particular attention to provisions that waive rights to recover a monetary award or would require confidentiality.

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The **Client Alert** is prepared by Meridian Compensation Partners' Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-347-2524.

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