

Companies Subject to U.S. Jurisdiction Should not Restrict Personnel from Being SEC Whistleblowers, or Receiving SEC Whistleblower Awards

September 17, 2024 – Cross-Border Counselor

by Christopher L. Doerksen

SEC rules prohibit taking “any action” to impede an individual from communicating directly with the SEC about a possible securities law violation, including by enforcing, or threatening to enforce, a confidentiality agreement. Previously, the SEC has brought enforcement actions against, and secured large monetary settlements from, companies whose internal agreements and policies included broad confidentiality provisions that would restrict an employee from voluntarily being a whistleblower to the SEC.

This month, the SEC announced a new round of settlements with seven different U.S. listed companies, who agreed to pay the SEC penalties totaling \$3 million for violating these rules. What is notable about this new round of enforcement is that in each case, the SEC objected to language in internal employment agreements, separation agreements, and releases by the company that required the employee or former employee to waive their right to a monetary whistleblower award. The SEC took the position that restricting an employee’s receipt of a whistleblower award is itself an impermissible impediment on whistleblowing, even if the employee is otherwise permitted to be a whistleblower. In only three of the seven cases did the SEC also identify language that directly prohibited whistleblowing.

Companies subject to U.S. jurisdiction should be aware of this SEC position, and should consider including in their agreements and policies, including employment agreements, separation agreements, and releases, language designed to ensure that personnel are both permitted to directly communicate with the SEC as a whistleblower and to receive a whistleblower award if applicable.

Related People

- Christopher L. Doerksen

Related Capabilities

- Canada Cross-Border Transactions