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SEC Charges Public Companies with Violations of Whistleblower Protection Rule

On September 9, 2024, the Securities and Exchange Commission (SEC) announced settlements with seven public companies for using employment, separation, and other agreements that violated rules prohibiting actions to impede whistleblowers from reporting potential misconduct to the SEC. In addition to remediation steps these companies agreed to in connection with agreeing not to violate the rules in the future, the companies involved also agreed to pay a combined total of more than \$3 million in civil penalties.

According to the SEC's orders, these companies, among other things, utilized employment or severance agreements, some of which (i) prohibited employees from filing complaints or charges with any federal, state, or local agency or court or (ii) specifically permitted the employees to file a complaint or participate in a proceeding, but required employees to waive their right to possible whistleblower monetary awards. The orders also cited two of the companies who entered into consulting agreements with contractors that prohibited the contractors from voluntarily providing information about the companies' business operations to government agencies and required that the contractors notify the companies of any legally compelled disclosure of such information. The SEC determined that this severely impedes would-be whistleblowers from reporting potential securities law violations to the SEC and charged each of the firms with violating whistleblower protection Rule 21F-17(a), which prohibits any action to impede an individual from communicating directly with the SEC staff about a possible securities law violation.

What this means to you

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Companies should review their employment agreements, separation agreements, and consulting agreements to ensure that they do not (i) prohibit employees from filing complaints or charges with any federal, state, or local agency or court; (ii) require employees to waive their right to possible whistleblower monetary awards; (iii) prohibit contractors from voluntarily providing information about the company's business operations to government agencies; (iv) require contractors to notify the company of any legally compelled disclosure of information regarding the company's business operations; or (v) contain any other provisions that would impede an individual from communicating directly with the SEC staff about a possible securities law violation.

Contact us

Husch Blackwell's Securities & Corporate Governance team will continue to monitor these developments and their implications. If you have any questions, please contact Craig Adoor, Steve Barrett, Robert Joseph, Victoria Sitz, Andrew Spector, or your Husch Blackwell attorney.