Insights, News & Events

PRIVATE COMPANIES AND SOX: DOES SARBANES-OXLEY EXTEND TO WHISTLEBLOWERS AT PRIVATELY HELD ENTITIES? PRACTITIONERS SHOULD BE CAREFUL

Publication
Mar 6, 2006

If you have been identified as the point person in your law firm or legal department for fielding Sarbanes-Oxley Act whistleblower questions, chances are one of the most frequent questions you are getting is something like this: "An employee who works for one of our privately held clients (or entities) thinks he is a whistleblower. Is he covered by the Sarbanes-Oxley Act at all?"

Practitioners should be careful here. This general concept is correct: SOX was designed to protect the shareholders of publicly traded companies that have to register their shares with the SEC, and most provisions of SOX do apply to only such companies. But taking this thought too far ignores the language of Section 806(a) of SOX, 18 U.S.C. Section 1514(a), which expressly prohibits retaliation against a whistleblower (as defined by SOX) by "officers, employees, contractors, subcontractors, or agents" of publicly traded companies covered by the act.

Some would-be whistleblowers have tried to expand the scope of SOX whistleblower coverage to include the employees of any privately held organization which at any time has ever been a contractor, subcontractor or agent of a publicly traded company.

This article appeared in the March 6, 2006 issue of the *Fulton County Daily Report*. Another version of this article, "Whistleblower Claims" appeared in the April 3, 2006 issue of *The National Law Journal*.