

CRYPTO'S STABLECOIN MELTDOWN PROVIDES 3 KEY TAKEAWAYS FOR EMPLOYERS

Insights
May 12, 2022

A popular stablecoin plummeted in value on Wednesday, sending shivers down the spines of crypto investors who were banking on a bit more stability with their holdings – and providing three key takeaways to employers who may want to pay their workers in cryptocurrency or offer it as a retirement investment option. While cryptocurrencies are known for their volatility and parabolic price swings – an aspect that appeals to some and turns off others – “stablecoins” are designed to have significantly less volatility because they are supposed to be tightly pegged to a traditional fiat currency such as the U.S. Dollar. Over the past week, however, one of the more popular stablecoins, TerraUSD (UST), suffered a complete meltdown to under 26 cents on Wednesday, wiping out billions of dollars of value in the process. Remember, it’s supposed to stay at a value near or at \$1 – forever and ever. This event surely will have widescale implications across various industries – including serving as a reminder for employers about three key considerations when deciding whether and how to pay workers in crypto.

What Happened?

Most stablecoins are backed by real-world collateral such as dollars or an asset with equivalent value. UST, however, is an “algorithmic stablecoin,” which means that it wasn’t backed by these types of collateral but instead reliant on intricate code engineering to maintain its value.

Over the weekend, UST lost its “peg” to the US dollar, attempted to regain it, and lost it again mid-week. As a

Related People



Phillip C. Bauknight

Partner

[908.516.1059](tel:908.516.1059)

result, the value of UST tumbled drastically on May 11.

This was a significant moment in the crypto industry because UST had the third-largest market capitalization of the stablecoins and was the most popular algorithmic one. Critically, the impact of this development appears to be having widespread ramifications on the stablecoin market overall. Tether, the world's largest stablecoin, broke below its \$1 peg the next day.

What Does This Mean for Employers?

Many people look at stablecoins as a sort of crypto bank account, offering a way to capture large increases in value by selling their crypto at opportune times, storing the value of those gains in stablecoins, and jumping back into the crypto market when it is more subdued. Arguably, this avoids the need to move your money out of the crypto ecosystem when not holding non-stablecoin assets.

As a result, in addition to employees asking to be paid in large market cap currencies such as Bitcoin and Ethereum, there has been an increasing demand for payment in stablecoins. Many employees believe payment in this manner allows them to enter, or remain in, the crypto ecosystem without worrying about the value of their earnings dropping substantially after being paid. They could then purchase the crypto of their choice at a time that best suits their particular interests and volatility tolerance.

These recent events, however, serve as a reminder for employers evaluating whether to pay wages in cryptocurrency that unexpected external factors can have a significant impact on the volatility of cryptocurrency, stablecoins or otherwise, and could result in drastic value fluctuations in short periods of time. For example, fluctuations in value could occur from the end of the payroll period to when the payment reaches the employee's digital wallet.

In fact, many pay systems have a delay in the pay cycle to serve as a disincentive to an employee trying to time the price of their preferred cryptocurrency. Using these recent stablecoin events as an example, employees paid \$1,000 in UST on Friday would have had less than \$300 by the time the money settled in their account on Wednesday.

This could result in significant ramifications for employers. For example, a worker who is rightfully disgruntled about being paid directly in crypto right before a pullback or a flash crash is a potential risk for wage disputes. They could argue the employer violated minimum wage or overtime laws if their crypto lost a substantial portion of its market value in the time between payroll being processed and receipt into their accounts.

Similarly, if all workers performing similar tasks are not paid at the same time, and some workers get paid before a substantial drop while others get paid at the bottom of the drop, there is also a risk of potential discrimination and pay equity claims on an individual and group basis.

3 Considerations for Employers

There are many potential benefits related to cryptocurrency compensation. However, risks do remain. Here are three key considerations for you to evaluate when deciding whether to pay your workers in cryptocurrency:

- **Check Relevant Wage and Hour Laws:** Employers should evaluate the applicable federal and state laws. As a reminder, the Fair Labor Standards Act requires that minimum and overtime wages be paid “in cash or negotiable instruments payable at par.” In addition, there are some state laws which require employee compensation to be made in U.S. currency. This could be particularly important for national employers who must evaluate the currency laws of multiple states.
- **Determine How to Pay Workers:** An employer evaluating whether to pay workers as part of its payroll or bonus program should consider whether the workers will be paid (1) in their normal currency, with a designated portion of their wages being rapidly converted to their selected cryptocurrency at that moment’s exchange rate; or (2) in the cryptocurrency itself. Remember, the IRS deems cryptocurrency to be property, which means the fair market value of the cryptocurrency is reportable. Many employers may want to consider using a third-party service specializing in crypto payroll processing to help manage this process and also have a clear understanding of any timing delay incorporated into the payment process.

- **Update Your Policies:** Any employer instituting a cryptocurrency payment program should strongly consider updating their policies. All employees participating in the program should provide their written authorization on a form clearly explaining the risks of participation. This documentation should be prepared in collaboration with counsel that has the necessary crypto subject matter expertise.

Conclusion

There is an increasing and noticeable demand by employees to be paid in cryptocurrency. That being said, legal authority on various employment-related issues related to digital currency payments is murky as cryptocurrency doesn't fit neatly into the boxes of existing statutes and regulations. Businesses and Human Resources Professionals considering the use of cryptocurrency compensation will need to have a clear understanding of the factors that may contribute to the volatility of cryptocurrency, the potential pitfalls that exist related to offering payment in stablecoins, Bitcoin or another cryptocurrency, and the reasons they are venturing into this space. You should consult with legal counsel when evaluating the various considerations related to cryptocurrency wage payments.

Fisher Phillips will continue to monitor the rapidly developing area. Should you have questions about compliance matters in this area, you should contact your Fisher Phillips attorney, a member of Fisher Phillips' [Cryptocurrency and Blockchain Practice Group](#), or the authors of this article. To ensure you stay up to speed with the latest developments, make sure you are [subscribed to Fisher Phillips' Insight System](#) to get the most up-to-date information.