

DOJ'S NEW WHISTLEBLOWER PROGRAM WILL LEAD MORE EMPLOYEES TO REPORT CORPORATE MISCONDUCT: HOW IT WORKS AND 6 STEPS YOU SHOULD TAKE TO PREPARE

Insights
Apr 25, 2024

Employees will be more incentivized than ever to report corporate misconduct to the Department of Justice thanks to a recently rolled-out initiative. After previously introducing whistleblower programs that reward companies for coming clean on criminal conduct, the DOJ is now piloting a program that rewards individuals who voluntarily disclose original information about illegal corporate misconduct – even if they actively participated in the illegal activity. Under this new program, employee whistleblowers may be eligible to receive non-prosecution agreements when certain conditions are met. We'll give you what you need to know and six steps you should take to prepare.

What Happened?

The DOJ's Criminal Division on April 15 launched the [Pilot Program on Voluntary Self-Disclosures for Individuals](#). This the agency's latest move in a recent wave of corporate compliance initiatives. Earlier this year, the [DOJ announced new whistleblower programs](#) that reward companies with reduced sentences for self-reporting misconduct and offer financial rewards to employees who report corporate illegal activities.

How Does the New Program Work?

Individuals who voluntarily self-disclose original information about criminal misconduct – including the full extent of their

Related People



Raymond W. Perez
Of Counsel



Jeffrey Shapiro
Partner
[617.532.5891](tel:617.532.5891)

own role in it – may be eligible to receive a non-prosecution agreement if certain criteria are met.

First, the disclosure must:

- be **made directly** to the DOJ Criminal Division;
- include “**original information**” (nonpublic information not previously known by the DOJ) regarding at least one or more of the following elements;
 - allege violations by **financial institutions** such as fraud or money laundering;
 - involve violations related to the **integrity of financial markets** by financial institutions or public companies with more than 50 employees; or
 - include allegations of foreign corruption, bribery of domestic public officials, health care fraud or federal contracting fraud by companies with 50 or more employees.
- be **voluntary**, meaning that it is made prior to any requested disclosures by the DOJ, without any pre-existing obligation to disclose the information, and absent any government investigation; and
- be **truthful and complete**.

Second, the individual must:

- **fully cooperate** with the investigation; and
- agree to **forfeit any profits** from the criminal wrongdoing.

Third, an individual is **not** eligible for the program if they:

- engaged in **certain types of criminal conduct** such as violent offenses or terrorism;
- are the **CEO or CFO** (or equivalent);
- are the **organizer or leader** of the scheme;
- are domestic or foreign **government officials**; or
- have a **previous conviction** for a felony or any crime involving fraud or dishonesty.

Service Focus

Corporate Compliance and Governance

What Should You Do Now?

This new whistleblower program – along with the DOJ's other recent announcements – reinforce the agency's goal of creating incentives for self-reporting. Employers need to recognize that employees, even those involved in the illegal activity, are more likely than in the past to report directly to the DOJ without informing their employers. You should therefore take the following steps as soon as feasible:

- 1. Strengthen Your Compliance Programs.** Make sure you have a compliance and ethics program in place to monitor for violations – including well-trained employees who know what to look for and a transparent reporting infrastructure that encourages a “speak up culture.” Your policies must clearly set forth your expectations and standards for employee conduct, provide a mechanism for anonymous reporting, and strictly prohibit any form of retaliation. Any issues must be promptly investigated by trained investigators following consistent processes and addressed promptly and appropriately once detected.
- 2. Lead By Example.** One of the most important – and often overlooked – aspect of any compliance and ethics program is leadership from the top. Company leaders must set and live by the standard every day. Make sure your highest-level executives lead by example and take part in communicating the importance of these control measures. Employees will be less tempted to engage in misconduct if your company leadership reflects the message that you take these matters seriously and actively take steps to prevent it.
- 3. Divide Duties.** Next, it is essential to implement effective internal controls to prevent opportunities for misconduct. One of the most effective internal controls is segregation of duties. This concept involves the separation of financial transaction tasks among different employees. It can also apply to compliance reporting by ensuring no single employee has exclusive control over the creation and dissemination of government filings.
- 4. Conduct Surprise Audits.** You should also implement some type of random audits to confirm the validity of transactions and purchases. The mere knowledge that the transactions may be scrutinized could be enough to prevent fraud. Moreover, such audits are often viewed favorably by enforcement authorities as evidence that

your organization takes compliance seriously and is actively trying to prevent it.

5. **Use Artificial Intelligence.** One advanced auditing method involves the use of AI tools to spot outliers – such as exceedingly high transaction costs or instances of the same individuals involved in seemingly unrelated transactions. This can be particularly useful when dealing with vast quantities of information on a global scale.
6. **Spot Red Flags.** You should also be on the look-out for warning signs of potential misconduct. These often include such things as employees who never take time off or who refuse to let other employees perform their duties (as this could indicate someone is fearful that their fraud will be discovered). Be sure to have an internal system in place for employees to report their concerns (anonymously if they wish). All concerns raised should be promptly investigated and appropriate corrective action must be taken if malfeasance is discovered.

Conclusion

As the DOJ ramps up its efforts to root out illegal corporate conduct, you should review and potentially revise your compliance strategies. If you need assistance, please contact your Fisher Phillips attorney, the authors of this Insight, any attorney in our [Corporate Compliance & Governance Group](#), or any attorney in our Workplace Investigations Group. Make sure to subscribe to [Fisher Phillips' Insight System](#) to get the most up-to-date information on this and other workplace topics sent directly to your inbox.