FP Snapshot for Manufacturers: New Program Encouraging Corporate Whistleblowing Puts Manufacturers on Notice

Insights
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Welcome to this edition of the FP Snapshot on the Manufacturing Industry, where we take a quick snapshot look at a recent significant workplace law development with an emphasis on how it impacts employers in the manufacturing sector. This edition is devoted to a new program encouraging employee whistleblowers to report illegal activities to the federal government. This development will have a particular impact on those manufacturers that are public companies or have dealings with the U.S. or foreign governments, so read on to find out what you need to do as a result.

Snapshot Look at the DOJ's New Whistleblower Program on Corporate Misconduct

The Department of Justice's (DOJ's) new Pilot Program on Voluntary Disclosures for Individuals is the latest attempt by the DOJ's Criminal Division to encourage whistleblowing in the corporate space. Under this latest proposal, individuals who voluntarily self-disclose original information about certain types of criminal misconduct – including the full extent of the employee's own role in it – may be eligible to receive a non-prosecution agreement if certain criteria are met.

For a deeper dive into the situation, you can read our full Insight here.

What Do Manufacturers Need to Know?

In recent years, the DOJ has intensified its focus on identifying and prosecuting corporate misconduct. These efforts have included efforts to get corporations to self-report in exchange for reduced sentences and cash incentives for employees who report illegalities in the workplace. The Pilot Program takes these efforts one step further by encouraging employees who have participated in illegal activity to self-report in exchange for potential immunity from prosecution.

To make a complaint, an employee seeking to avail themselves of the new program must report directly to the DOJ's Criminal Division "original information" (nonpublic information not previously known by the DOJ) regarding specific types of violations. For manufacturers, the most relevant of these may involve those related to:

- the integrity of financial markets;
- allegations of foreign corruption;

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- bribery of domestic public officials;
- healthcare fraud; or
- federal contracting fraud.

In each case, the company that is the alleged violator must be one with 50 or more employees.

Although these crimes are not specific to manufacturers, there is a danger that prosecutors will use non-identified crimes such as OSHA violations or wage-and-hour claims and turn the failure to disclose such violations into a financial reporting crime – which is covered by the new program. Failure to pay Davis-Bacon Act wages on a federal contract could likewise be interpreted as qualifying for the program is prosecutors are particularly intent on obtaining witness information and wish to use the relative leniency of the new program as an incentive.

In order to protect your organization from potential liability, you should focus on six steps that can be taken now to shore up compliance and minimize risks:

1. **Strengthen Your Compliance Programs.** Make sure you have a compliance and ethics program in place to monitor for violations and encourage a "speak up culture."
2. **Lead By Example.** Company leaders must set and live by the company's compliance standards every day. Make sure your highest-level executives lead by example and take part in communicating the importance of these control measures.
3. **Divide Duties.** Implement effective internal controls to prevent opportunities for misconduct. For instance, consider the separation of financial transaction tasks among different employees, or dividing reporting requirements to ensure no single employee has exclusive control over the creation and dissemination of government filings.
4. **Conduct Surprise Audits.** Implement some type of random audits to confirm the validity of transactions and purchases.
5. **Use Artificial Intelligence.** Utilize an auditing method involves the use of AI tools to spot outliers – e.g., exceedingly high transaction costs or instances of the same individuals involved in seemingly unrelated transactions.
6. **Spot Red Flags.** Continually monitor for warning signs of potential misconduct. Have an internal system in place for employees to report their concerns (including anonymously) and investigate and take corrective action immediately when warranted.

It is important to note that while the Pilot Program is currently focused on only certain, specific types of misconduct, it is possible that the DOJ may expand it to include a much broader range of alleged illegal activity.

Want More?

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