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## Financial Reform Legislation Provides New Incentive and Protection for Whistleblowers of Securities Law Information

Earlier this year, a new federal bill passed that financially rewards employees for reporting their employers' violations of securities law, while simultaneously protecting them from any employer retaliation. Needless to say, The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Act") will give employees extra incentive to keep a close eye on their employers' investment, trading or public securities disclosure and reporting activities.

Signed by President Obama on July 21, 2010, the Act proposes to (1) promote the financial stability of the United States by improving accountability and transparency in the financial system, (2) end the "too big to fail" phenomena, (3) protect the American taxpayer by ending bailouts, (4) protect consumers from abusive financial services practices, and (5) support undefined "other purposes." It amends the Securities Exchange Act of 1934 by adding certain protections (to be cited as the "Investor Protection and Securities Reform Act of 2010"). Of particular importance to employers are the rewards and protections for whistleblowers and the non-disclosure provisions.

### 1. Whistleblowers are financially rewarded and protected.

Section 922 creates what is being called a "whistleblower bounty program." Individuals who provide information about a securities law violation which leads to a successful SEC judicial or administrative enforcement action with monetary sanctions exceeding \$1,000,000 will be financially rewarded in an amount between 10 and 30 percent of what is collected in the action or related actions.

Criteria for determining the amount of the award to be paid includes (1) the significance of the information provided by the whistleblower to the success of the action, (2) the degree of assistance provided by the whistleblower, (3) the programmatic interest of the Commission in deterring violations of the securities laws by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and (4) such additional relevant factors as the Commission may establish by rule or regulation.

The Act expressly prohibits an employer from the following retaliatory activities:

No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower (i) in providing information to the Commission in accordance with this section; (ii) in initiating, testifying in,

or assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information; or (iii) in making disclosures that are required or protected under the Sarbanes-Oxley Act of 2002, the Securities Exchange Act of 1934, section 1513(e) of title 18, United States code, an any other law, rule, or regulation subject to the jurisdiction of the Commission.

## **2. SEC can refuse to provide otherwise public information.**

Section 9291 exempts the SEC from disclosing certain information “obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities.” The SEC has already rejected a Freedom of Information Act request on July 27, 2010 based upon this new law. So, while the SEC has stated that this legal change is necessary for it to get and use the information it needs, the provision has been criticized for allowing the SEC to avoid the typical disclosure rules applicable to federal agencies. (See Fox Business news story: [www.foxbusiness.com/markets/2010/07/28/secsays-new-finreg-law-exernpts-public-disclosure/](http://www.foxbusiness.com/markets/2010/07/28/secsays-new-finreg-law-exernpts-public-disclosure/).)

### **What does this mean for employers?**

Employers needs to be aware of this significant change in the law that gives employees an incentive for reporting any violation of the securities law and to understand that such employees are protected from adverse job actions. Employers may want to put some additional protections in place to have an opportunity to respond to concerns before employees make a report to an outside agency such as the SEC. One valuable tool is a whistleblower hotline that would give the company information about a concern that it can then address internally, both quickly and cost- effectively. Another suggestion is to appoint an ombudsman to encourage employees to bring concerns without fear of retaliation and to afford the entity an opportunity to address the problem before it is reported.

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