

SEC Issues 2018 Annual Report to Congress on its Whistleblower Program

U.S. SECURITIES AND EXCHANGE COMMISSION, 2018 ANNUAL REPORT TO CONGRESS: WHISTLEBLOWER PROGRAM (2018).

The SEC reports more dollars to whistleblowers and more tips reported to The Commission than ever before. This reflects both a growing, robust Whistleblower Program and recent changes in the legal landscape.

WHAT YOU NEED TO KNOW

The SEC reports a “record breaking year” in its 2018 Annual Report to Congress on its Whistleblower Program. In Fiscal Year (FY) 2018, the SEC issued more dollars to whistleblowers than in all previous years combined. It also received 5,200 tips in FY 2018, which represents an almost seventy-six percent increase since FY 2012.

This “record-breaking year” can be attributed to two major factors. First, it is a reflection of the program’s growth from adolescence to adulthood. The Whistleblower Program, which began fully operating in 2012, is relatively new, so it is not surprising that more whistleblowers are emerging as the public becomes more aware of the program and its monetary awards. Secondly, the Supreme Court recently ruled in *Digital Realty v. Somers* that a “whistleblower” under the Dodd-Frank Act is limited only to those who directly report to the SEC, and not those who report internally. *Dig. Realty Tr., Inc. v. Somers*, 138 S. Ct. 767 (2018). In other words, whistleblowers can only receive protection under the Dodd-Frank Act if they report directly to the SEC. In the months following this ruling, the SEC notes expressly in its 2018 Report that it saw an increase in the number of tips received.

It is also significant that in its report, the SEC emphasizes its continued commitment to the protection of whistleblowers. During the current administration, fewer resources are being allocated to agencies and programs, but the SEC’s Whistleblowing Program shows no signs of relenting.

WHAT YOU NEED TO DO

Since 2012, eighty-three percent of awards were given to employees who first tried to report their concerns internally. This statistic underscores the critical importance of an effective compliance program because it shows that individuals have historically tried to first raise concerns with their employers. Although this number is likely to decrease after *Digital Realty*, it still indicates that employees have an instinct to first report to their employers. This represents an opportunity for employers to be able to address employees’ concerns before they report to the SEC. Counsel should advise employers to invest in compliance through enhanced reporting mechanisms, investigation protocols, and manager training, given that there is now a higher risk that individuals will be tempted to take their concerns directly to the SEC.

FOR MORE INFORMATION

If you have questions about these developments, please contact Greg Keating, chair of the Whistleblower Defense and Labor, Employment and Benefits Practice Groups, or one of the following attorneys.

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