



Labor & Employment/Securities Litigation ADVISORY ■

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SEC Brings Enforcement Action Over Employee Confidentiality Agreement

Yesterday, the U.S. Securities and Exchange Commission (SEC) announced its first enforcement action against a company for using language in a confidentiality agreement the SEC determined was in violation of Rule 21F-17, a whistleblower protection rule that prohibits companies from taking any action to impede whistleblowers from reporting possible securities violations to the SEC. The company required employee-witnesses in certain internal investigations to sign confidentiality statements that, in effect, required the parties to seek company approval before discussing the matters with a government agency. The enforcement action follows on the heels of the SEC's recent sweep for documents, including nondisclosure, separation and release agreements, that was the subject of a [prior advisory](#).

The company, a Houston-based global technology and engineering firm, agreed to pay \$130,000 to settle the SEC's charge that some of the confidentiality agreements included language warning employees that they could face discipline or be fired if they discussed internal investigations with outside parties without first getting approval from the company's legal department. Specifically, the company's confidentiality agreements included the following language:

I understand that in order to protect the integrity of this review, I am prohibited from discussing any particulars regarding this interview and the subject matter discussed during the interview, without the prior authorization of the Law Department. I understand that the unauthorized disclosure of information may be grounds for disciplinary action up to and including termination of employment.

Because some of the company's internal investigations that were the subject of these confidentiality agreements related to potential violations of securities laws, the SEC found that these terms stifled the whistleblowing process in violation of Rule 21F-17.

In settling the enforcement action, in addition to paying \$130,000, the company agreed to cease and desist from further violations of Rule 21F-17. The company amended its confidentiality agreements by adding the following language, making clear that employees are free to report possible violations to the SEC and other federal agencies without company approval or fear of retaliation:

Nothing in this Confidentiality Statement prohibits me from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department

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of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. I do not need the prior authorization of the Law Department to make any such reports or disclosures and I am not required to notify the company that I have made such reports or disclosures.

The SEC's recent sweep for documents coupled with this enforcement action is a clear warning to public company employers and their affiliates subject to Dodd-Frank. The SEC is closely scrutinizing employee confidentiality and other agreements and will target those agreements that may be viewed as impeding an employee from sharing information with the government about financial fraud or potential violations of securities laws. Employers should review their agreements and revise accordingly.

For more information, please see the SEC's [press release](#) and [order](#).

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