



Labor & Employment ADVISORY ■

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U.S. Supreme Court Clarifies “Whistleblower” Definition Under Dodd–Frank

On February 21, 2018, the U.S. Supreme Court ruled in favor of a narrow definition of the term “whistleblower” under the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, the federal law enacted in response to the 2008 financial crisis which, in addition to imposing new regulations on the financial industry, created new whistleblower protections and a new incentives and reward program to encourage reports of suspected violations of securities laws to the Securities and Exchange Commission (SEC).

The justices ruled that the anti-retaliation provisions of Dodd–Frank only apply to people who report legal violations to the SEC. The Supreme Court reversed the decision by the Ninth Circuit in *Digital Realty Trust Inc. v. Paul Somers*, which held that an employee who complained to upper management at his company, but not the SEC, was entitled to protection. The Supreme Court’s ruling clarifies that employees who bring only internal complaints of alleged misconduct do not fall within the definition of a “whistleblower” and cannot bring a retaliation claim under Dodd–Frank. Since far fewer employees take their complaints to the SEC than complain internally to their employer, the Supreme Court’s ruling may significantly reduce the number of Dodd–Frank retaliation claims.

In rendering its ruling, the Supreme Court focused on the plain language of the statute. Dodd–Frank defines a whistleblower as “any individual who provides . . . information relating to a violation of the securities laws to the Commission, in a manner established, by rule or regulation, by the Commission.” Writing for the Court, Justice Ginsburg found that the purpose of the whistleblower provision in Dodd–Frank was “to motivate people who know of securities law violations to tell the SEC.”

Employees who contend they were subjected to reprisals for reporting issues to their company’s management are still able to bring a claim for retaliation under the Sarbanes–Oxley Act (SOX), but SOX requires exhaustion of administrative prerequisites before the Occupational Safety and Health Administration and provides more limited monetary damages than the anti-retaliation provisions under Dodd–Frank.

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