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**GAME CHANGER:  
NEW SEC WHISTLEBLOWER RULES  
TAKE EFFECT**

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# DODD-FRANK WHISTLEBLOWER LAWS

- Codified in Section 21F of the Securities Exchange Act.
- Implemented in Regulation 21F, which went into effect on August 12, 2011.



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# WHISTLEBLOWER BOUNTY PROVISIONS

- SEC is required to pay whistleblowers 10 to 30% of the aggregate monetary recoveries.



## ELEMENTS FOR RECEIVING A BOUNTY

- Must voluntarily provide information regarding a violation of the federal securities laws to the SEC;
- Information must be original;
- Information must lead to a successful enforcement action; and
- Sanctions must exceed \$1,000,000.



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## WHO MAY BE A WHISTLEBLOWER?

- Any natural person.
- But need not be an employee.



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## POTENTIAL IMPACT

- 30,000 complaints annually.
- 143 enforcement actions annually.



## IMPACT ON INTERNAL COMPLIANCE

- No requirement to report through a company's internal channels prior to reporting to the SEC to receive an award.



## EXAMPLE: FOREIGN CORRUPT PRACTICES ACT

- A foreign independent contractor's report of kickbacks paid by officers of a private company to foreign officials in exchange for government contracts could trigger whistleblower bounty provisions.



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# ANTI-RETALIATION PROVISIONS

- Anti-retaliation provisions of Section 21F and Regulation 21F:
  - Broader than, and complementary to, the bounty provisions.

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# ANTI-RETALIATION PROVISIONS: A PRIMER

- Protects employees who:
  - Report through the whistleblower bounty program;
  - Assist in an investigation or action related to such information;
  - Make disclosures that are protected or required under Sarbanes-Oxley, the Securities Exchange Act, or other law or rule subject to the SEC; or
  - Make reports to law enforcement officials regarding the possible commission of a federal offense.



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## SARBANES-OXLEY VS. DODD-FRANK ANTI-RETALIATION PROTECTIONS

- Some differences from the anti-retaliation protections of Sarbanes-Oxley:
  - Broader scope;
  - Longer statute of limitations;
  - Right to bring an action directly in federal court;
  - Cannot require employees to submit to arbitration;
  - Damages are greater.



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## EXAMPLE:

# ANTI-RETALIATION PROVISIONS

- Employee at a small private company who reports to the SEC that individuals are engaging in wire fraud and is fired by her employer could bring a direct anti-retaliation action in federal district court.



## **PRACTICAL SUGGESTIONS:**

- Adopt a whistleblower policy.
- Provide many means of reporting.
- Offer periodic training.



## PRACTICAL SUGGESTIONS:

- Review and update employee confidentiality agreements and employee handbooks.
- Confirm in exit interviews that the employees are not aware of any possible violations.
- Take immediate action if you receive a complaint.



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