

Largest Ever Whistleblower Payout

Recently United States' financial regulator, the Securities and Exchange Commission (SEC) gave an award of approximately \$279 million to a whistleblower – the largest award ever issued. The specific case concerned was not disclosed. This award indicates the significant incentive for individuals to share accurate, helpful information about potential securities law violations and the risks this exposes firms to. It is vital for firms to understand how relevant whistleblower legislation impacts them, especially as this is international in scope.

US Approach to Whistleblowing

One of the key whistleblower laws in the United States is the Dodd-Frank Act (“the Act”), passed in 2010 after the 2008-09 financial crisis. The intention of this law was to promote financial stability by increasing transparency and accountability. Due to enhanced provisions, many cases relating to whistleblowers are now covered by this legislation. Whistleblowers outside the United States can also collect financial rewards. It is important to note that when whistleblowers file complaints, they must provide “original information” which means that the information must not be known to the SEC and has to be “derived from the independent knowledge or analysis of a whistleblower.” Once a complaint is filed, the SEC and/or CFTC will investigate the matter. If the SEC or CFTC finds that the complaint is valid, then the whistleblower will be financially compensated. Whistleblowers can be awarded anywhere from 10% to 30% of the money collected when the monetary sanctions are valued over \$1 million. Since the introduction of the Act, the SEC and CFTC have recovered over \$3.7 billion and \$840 million of that money has been awarded to whistleblowers. In 2020 alone the SEC received 6,900 whistleblower complaints – including from 78 countries outside of the United States.

EU Considerations

In Europe the Whistleblower Protection Directive (Directive (EU) 2019/1937), which became effective in 2021, enhances related protections by requiring companies or public bodies in the EU with 250 or more employees to implement an internal reporting policy for whistleblowing. In addition certain regulatory regimes relating to

financial services (including CRD, MiFID and UCITS) include additional provisions requiring relevant entities to implement whistleblowing procedures relating to breaches of the relevant regulations.

Irish Legal Protection

Ireland also has legislation that protects whistleblowers from potential negative treatment. Under the Protected Disclosures Act 2014 as amended (the “PDA 2014”), whistleblowers in Ireland are protected from penalisation after making relevant disclosures, i.e. whistleblowing. In addition, this legislation requires firms to establish procedural infrastructure for whistleblowers. Including internal reporting channels and procedures for relevant reports.

Unlike in the United States, in Ireland there is no compensation scheme in terms of a percentage of payouts, but whistleblowers can get up to five years remuneration as compensation.

The Central Bank (Supervision and Enforcement) Act 2013 also provides protections for persons making disclosures in good faith to the Central Bank of Ireland in relation to breaches of financial services legislation or codes made thereunder. Protections are also potentially available for disclosures under the Criminal Justice Act 2011.

How Clerkin Lynch Can Help

The \$279 million award given by the SEC highlights the importance of understanding legislation surrounding whistleblowers. Clerkin Lynch can help firms ensure that they are compliant with both the PDA 2014 and other relevant whistleblower legislation.



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