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Whistleblowers who call the SEC gain financial rewards

By day, they're mild-mannered accountants. Or human resource managers. Or shipping clerks. But to the government, they're the eyes and ears of the U.S. Securities and Exchange Commission.

They're known as "bounty hunters," but the employees who turn their companies in for insider trading, cooking the books and other securities violations won't appear on a reality television show. Their identity is kept secret.

As part of the Dodd-Frank Act, the SEC launched a whistleblower program in which employees who report potential financial fraud that exceeds $1 million can recover 10 percent to 30 percent of the penalties. Contractors, vendors and others with direct knowledge of fraud can also participate in the program.

Earlier this month, the Securities and Exchange Commission announced that it paid a $875,000 bounty for two individuals who provided "tips and assistance" that helped the agency develop a case. No word on which company was fined or who got the money.

"These whistleblowers provided original information and assistance that enabled us to investigate and bring a successful enforcement action in a complex area of the securities market," Sean McKessy, chief of the SEC's Office of the Whistleblower, said in a news release. "Whistleblowers who report their concerns to the SEC perform a great service to investors and help us combat fraud."

Last fall, one bounty hunter got $14 million, said Mark Oberti, an employment lawyer with Oberti Sullivan in Houston.

The big-dollar awards are starting to attract the attention of employers, said Oberti, who gave a recent presentation to other lawyers about the trend. That concern is likely the grow, he said, because a lot of employees don't yet know what they can gain if they report wrongdoing.

Notable incentive

One of the reasons companies are taking note is that with so much money at stake, employees will have an incentive to turn over information directly to the government rather than use in-house reporting channels, said Philip Hilder, a white-collar criminal defense lawyer and former federal prosecutor in Houston.

Companies were required to set up internal reporting channels in the aftermath of the Enron collapse, said Hilder, whose own role in the debacle involved representing former Enron vice president Sherron Watkins, who went to then-chairman Ken Lay to report looming accounting problems.

The internal reporting requirements were included in the Sarbanes-Oxley Act of 2002.

Surprises possible

However, Hilder said, Sarbanes-Oxley does not provide a financial bounty for employees who come forward.

With the new whistleblower incentives, he said, employees are likely to bypass the internal channels. That means company officials may never know about allegations of financial shenanigans until government investigators come calling and they won't have an opportunity to correct the wrongdoing internally.

They'll lose control of the situation, said Hilder, who has filed complaints on behalf of several clients under the new Dodd-Frank program. Some of the complaints have already spawned investigations, while others are in more preliminary stages, he said. None have yet resulted in the payment of a bounty.

So far Bill Bux, an employment lawyer with Locke Lord in Houston, hasn't encountered any instances of the new whistleblower provision playing out in Houston.

But he has defended employers under Sarbanes-Oxley, and if the new, more extensive whistleblower statute is anything like its older cousin, Bux predicts that the new law will tip the scales of power in the workplace.

Retaliation issue

He predicts employees, or their lawyers, will likely want to blow the cover of anonymity and put the company CEO on notice that a securities complaint has been filed.

"They really can't fire you," he said, referring to the anti-retaliation provisions in the whistleblower and other employment laws that protect employees who report possible criminal activity.

Bux said he could also envision a scenario in which an employee is worried about getting fired. Or maybe a layoff is coming.

To make sure he or she doesn't get a pink slip, the employee could report trumped-up allegations of financial misdeeds to the SEC and send a copy to the company CEO, Bux said. The charge, even if bogus, puts the company on notice that a complaint has been filed and the company would be loath to send the employee packing.

"It would be something very difficult to defend," he said.

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