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February Tip of the Month: SEC Targets Whistleblower Restrictions in Employment-Related Agreements



The U.S. Securities and Exchange Commission (SEC) has signaled that it will take aggressive action against employers who, by way of employment-related agreements, restrict, prohibit, or otherwise discourage employees from reporting suspected securities law violations. For example, in September 2023, an employer agreed to pay \$10 million to settle claims that it had (1) utilized confidentiality agreements prohibiting employee disclosure of confidential company information to third parties, without an exception for SEC whistleblowers; and (2) similarly required employees to sign releases stating that they had not filed complaints with any government agency in order to receive deferred compensation. Given the SEC's escalated enforcement efforts and attention to this issue, employers should carefully review their employment-related agreements to ensure that the language accounts for, and does not run afoul of, the foregoing considerations. In particular, employers should closely assess confidentiality, nondisclosure, and standard release agreements to confirm that appropriate carveouts have been drafted regarding employee reporting to the SEC.

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