

SEC urges courts to extend retaliation protection to internal whistleblowers

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The Securities and Exchange Commission recently issued new guidelines stating that the anti-retaliation provisions in the Dodd-Frank Act should also apply to staff who report misconduct internally. These guidelines respond to a 2014 District Court ruling, which upheld a 2013 ruling that held that the anti-retaliation provisions only apply to staff who report potential misconduct to the SEC.

The SEC also asked the Appeals Court to adopt the same interpretation as in the new guidelines. If the court follows the request, the anti-retaliation provision will also apply to internal whistleblowers. This would mean that employees may not be harmed or discriminated in any way when they report misconduct internally. Non-compliance with this prohibition could lead to reinstatement of the employee with the same status as before, a doubling of the amount of back pay owed to the employee, and compensation for litigation costs.

The anti-retaliation rules were created in 2011. Ever since, the SEC and the US courts have disagreed on whether internal whistleblowers are protected under the rules. Looking at how the Dodd-Frank Act defines a whistleblower in the anti-retaliation provision – “any individual who provides (...) information relating to a violation of the securities laws to the Commission (...)” – it is unlikely that this difference of opinion will come to an end soon.

The guidelines published by the SEC on 4 August can be found [here](#).
