

# Recent SEC Whistleblower Awards Highlight Pervasive Retaliation

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When the SEC proposed regulations implementing the [Dodd-Frank Act SEC whistleblower reward provisions](#), many companies and the Chamber of Commerce strenuously urged the SEC to require whistleblowers to report internally prior to making a disclosure to the SEC Office of the Whistleblower. The main justification for this proposal was that companies had established effective internal reporting mechanisms and robust anti-retaliation policies. Proponents of this internal reporting requirement asserted that a program permitting whistleblowers to report directly to the SEC would [undermine compliance programs](#) and [create a perverse financial incentive](#) for employees who are responsible for identifying and investigating misconduct.

Ultimately, the SEC rejected this proposed internal reporting requirement but adopted rules that encourage and incentivize internal reporting. In particular, the [SEC whistleblower rules](#) increase the award percentage where a whistleblower “report[s] the violation internally through his or her firm’s internal reporting channels or mechanisms” prior to reporting to the SEC. The [largest SEC whistleblower awards](#) to date are \$50 million, \$39 million, and \$37 million.

## Awards to SEC Whistleblowers

Recent SEC whistleblower awards confirm the wisdom of the SEC’s rejection of a proposed internal reporting requirement. They also call into question the Chamber of Commerce’s assertions that internal reporting mechanisms are effective at detecting and halting fraud and that whistleblowers are protected against retaliation. In particular, the 2020 orders announcing awards to whistleblowers reveal that most of the whistleblowers suffered employment retaliation or other hardship and many of them raised concerns internally before making a disclosure to the SEC:

- ***\$5 Million SEC Whistleblower Award***

On April 20, 2020, the SEC awarded approximately [\\$5 million](#) to a whistleblower. The [order](#) notes the following factor warranting an upward adjustment: “Claimant suffered a **unique hardship as Claimant was terminated soon after raising concerns internally** about the conduct in question

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with Claimant's supervisor."

- ***\$2 Million SEC Whistleblower Award***

On April 3, 2020, the SEC awarded approximately [\\$2 million](#) to a whistleblower who provided significant new information during the course of an ongoing investigation. This information would have been difficult for the SEC to ascertain in the absence of the whistleblower's tip. The [order](#) cites the following two [award factors](#): "Claimant assisted with the Commission's investigation **despite implied threats made to Claimant**" and "**Claimant suffered hardships as a result of Claimant's whistleblowing.**"

- ***\$450,000 Million SEC Whistleblower Award***

On March 30, 2020, the SEC awarded approximately [\\$450,000](#) to a whistleblower who worked in a compliance role. One of the positively assessed facts the [order](#) cites is that the "**Claimant suffered unique hardships as a result of Claimant's internal reporting.**"

- ***\$7 Million SEC Whistleblower Award***

On February 28, 2020, the SEC awarded approximately [\\$7 million](#) to a whistleblower whose disclosures enabled the SEC to devise an investigative plan and craft its initial document requests. The [order](#) recognizes "Claimant's persistent efforts to remedy the issues, **while suffering hardships.**"

- ***\$27 Million SEC Whistleblower Award***

On April 16, 2020 the SEC awarded approximately [\\$27 million](#) to a whistleblower who disclosed information that was significant in enabling the SEC to uncover hidden conduct occurring, in part, overseas. One of the positive factors warranting an upward adjustment in the award is that "Claimant repeatedly and strenuously raised Claimant's concerns internally."

These recent whistleblower awards suggest that companies are not responding effectively, if at all, to internal whistleblower disclosures and that an all-too-common response is to retaliate against the whistleblower. Indeed, one of the orders suggests witness intimidation, i.e., the company was making threats against a whistleblower during an ongoing investigation.

## **SEC Whistleblower Program**

As the Dodd-Frank Act approaches its 10<sup>th</sup> anniversary and as the SEC whistleblower program reaches the important milestone of paying more than [\\$400 million](#) to whistleblowers, these recent awards underscore the importance of the program and they suggest that Congress and the SEC should take further actions to ensure that whistleblowers can come forward without fear of retaliation.

- Congress should promptly enact the [Whistleblower Programs Improvement Act](#) (S. 2529), which would protect corporate whistleblowers who report potential securities or commodities

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fraud to their employers and expedite the processing of applications for whistleblower awards. In July 2019, the House passed the [Whistleblower Protection Reform Act of 2019](#) (R. 2515) by an [overwhelming bipartisan majority of 410-12](#).

- The SEC should continue to enforce Rule 21F-17, which bars companies from impeding communications with the Commission and should penalize companies that violate the [whistleblower protection provision of the Dodd-Frank Act](#).
- The 2019 [annual report of the SEC Whistleblower Program](#) reveals that approximately 85 percent of award recipients that worked at the entity about which they reported wrongdoing to the SEC raised their concerns internally to their supervisors, compliance personnel, or through internal reporting mechanisms before disclosing the information to the SEC. This fact suggests that companies are not responding adequately to whistleblower disclosures and that the SEC whistleblower reward program is a critical enforcement tool for the SEC to detect and combat fraud. Indeed, since the program's inception, whistleblower tips have enabled the SEC to recover more than [\\$2 billion](#) in monetary sanctions from wrongdoers.

The prevalence of retaliation underscores the importance of the SEC continuing to take steps to maintain the confidentiality of a whistleblower's identity and to enable whistleblowers to file anonymously.

## **SEC Whistleblowers Protections**

The prevalence of retaliation against SEC whistleblowers is consistent with the results of a [Global Business Ethics Survey](#) (GBES) released by the Ethics & Compliance Initiative, which found that:

- Employees feel increased pressure to compromise organizational standards. In particular, 22% of private sector employees worldwide felt such pressure, and the numbers increase to 37% in India and 43% in Brazil.
- In the private sector, more than one in three employees reporting misconduct experienced retaliation.

The GBES also found that 72 percent of employees who experienced retaliation said it happened within three weeks of them first filing their report.

Therefore, it is important for SEC whistleblowers to be informed of federal and state law remedies to combat retaliation and to select the optimal remedies to maximize a recovery in a whistleblower retaliation case. And it is critical to understand the scope of and limitations of certain whistleblower retaliation laws. For example, the whistleblower protection provision of the Sarbanes-Oxley Act protects disclosures to a supervisor and other internal disclosures. However, internal disclosures are not protected under the Dodd-Frank Wall Street Reform and Consumer Protection Act, unless the whistleblower has already provided the information to the SEC.

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