

# A New Chapter in FCPA Enforcement: State Attorneys General Take Action to Enforce Violations

Article By:

Stephen S. Morrill

Eric J. Beste

Lyric D. Menges

---

In a significant shift, California's Attorney General announced his intention to enforce violations of the FCPA by businesses operating in California under the state's Unfair Competition Law (UCL).

A cornerstone of U.S. anti-bribery and anti-corruption policy, the Foreign Corrupt Practices Act (FCPA) has for decades fallen exclusively to the U.S. Department of Justice (DOJ) to enforce, providing a relatively stable and predictable enforcement environment for corporations and individuals engaged in international business. However, this predictability was upended this past February.

In response to a February 10 [executive order](#) temporarily suspending federal enforcement of the FCPA — which prompted the DOJ to review active FCPA matters, postpone trial dates, and, in at least one case, voluntarily dismiss charges — California has moved swiftly to assert its own enforcement authority. On April 2, California Attorney General Rob Bonta issued a [legal advisory](#) signaling his office's intent to enforce FCPA violations under California's Unfair Competition Law ("UCL") — the federal government's temporary pause notwithstanding.

Specifically, the advisory explains that the FCPA continues to impose binding obligations on California businesses and that violations of the statute may give rise to liability under the UCL, which prohibits "unlawful, unfair, and fraudulent business acts and practices." Cal. Bus. & Prof. Code § 17200 *et seq.* The UCL's broad reach allows the Attorney General to "borrow" violations of other

---

laws, including federal statutes like the FCPA, and pursue them as independently actionable violations under state law. The advisory underscores the range of remedies available to the California Attorney General in such cases, including civil penalties, restitution, injunctive relief, and disgorgement of ill-gotten gains.

## **State-Level FCPA Enforcement: California at the Forefront**

While California is currently leading the way, the question remains whether other states will adopt a similar approach. Several factors suggest this could be the beginning of a broader trend:

### **1. State attorneys general have increasingly positioned themselves as active enforcers in the face of shifting federal priorities.**

This is particularly true when those shifts touch on matters of consumer protection, public integrity, and corporate accountability.

### **2. Many states possess statutes analogous to California's UCL.**

Commonly referred to as Unfair and Deceptive Acts and Practices (UDAP) laws, these provide state-level enforcement mechanisms against a broad range of unlawful or deceptive business practices. Some UDAP laws, such as New York's General Business Law § 349, require a showing of consumer harm, while others (such as California's UCL) allow enforcement actions without the need to demonstrate direct consumer injury. Enforcement authorities in states with laws similar to California's UCL are well-positioned to leverage them against conduct traditionally addressed under the FCPA.

Whether other state attorneys general will follow California's lead remains to be seen, but the shifting enforcement landscape demands careful attention, as scrutiny from state-level enforcement may soon fill the gaps left by the DOJ's recalibrated approach.

### **3. Unlike the FCPA, private litigants have an independent, private right of action under California's UCL that empowers them to bring civil actions — suggesting the potential viability of leveraging FCPA violations as the predicate misconduct for UCL claims.**

Indeed, Attorney General Bonta's Advisory and accompanying press release may serve as such a signal to the UCL plaintiffs' bar. This prospect may be particularly attractive in the current enforcement climate, where some federal FCPA actions are temporarily paused or dropped altogether.

Under the UCL, private plaintiffs who can demonstrate that they have "suffered injury in fact and lost money or property as a result of unfair competition" may pursue claims for relief if they can meet the necessary standing requirements, including demonstrating that an economic injury was causally linked to the alleged misconduct. But in certain circumstances, companies with international operations may face significant financial exposure associated with alleged FCPA/UCL violations.

Against this backdrop, the most immediate and obvious targets for California state enforcement are likely to be companies with operations in California that were previously charged in federal FCPA cases but are now seeing their matters dismissed following DOJ's ongoing review. In addition, any "whistleblower" allegations of foreign bribery may now grab the attention of state enforcement authorities.

## Fragmented Authority and the Future of FCPA Enforcement

While California's legal advisory signals a new direction for FCPA enforcement at the state level, the practical realities of international anti-corruption investigations raise significant questions about the scope and effectiveness of such efforts.

Unlike the DOJ, state attorneys general lack dedicated federal investigative resources such as the FBI and typically do not maintain established channels of communication and cooperation with foreign law enforcement agencies. These structural limitations could pose serious challenges for state-led enforcement of complex, cross-border bribery schemes.

At the same time, the federal enforcement landscape is also shifting. Under [recently revised DOJ policy](#), each of the 94 U.S. Attorneys' Offices throughout the country now have greater authority to initiate and prosecute FCPA-related matters without the need for oversight or direct involvement from DOJ's Fraud Section, provided the conduct can be framed as "foreign bribery that facilitates the criminal operations of Cartels and Transnational Criminal Organizations (TCOs)."

### Takeaways

This development marks a significant shift in the FCPA enforcement landscape, particularly in light of the current administration's recent pronouncements and policies limiting federal enforcement of the statute. In this evolving environment, companies would be well-advised to reassess their anti-corruption compliance programs to ensure they account not only for federal enforcement risks, but also for the growing likelihood of state-level investigations, enforcement actions, and private causes of action.