

U.S. - SIGNIFICANT INCREASE IN COMPLAINTS BRINGS POTENTIAL FOR INCREASED SEC WHISTLEBLOWING ACTIVITY

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Among the myriad quarantine pursuits undertaken by the work-from-home crowd, whistleblowing appears to be proving popular. Recent reports indicate that the SEC received more than 4,000 Tips, Complaints, and Referrals (“TCRs”) regarding possible corporate malfeasance between mid-March and mid-May. As noted by Division of Enforcement Co-Director Steve Peikin in a recent [speech](#), that represents an approximate 35% increase over the same period last year. This surge in TCRs has resulted in the SEC initiating hundreds of new investigations of alleged misconduct in the contexts both of COVID-19 and many other traditional areas. After already facing challenges from the coronavirus pandemic, many employers may be surprised by this new COVID-19 side-effect.

Under the SEC’s Whistleblower Program, individuals who report TCRs containing high-quality [original information that results in financial relief exceeding \\$1 million may be eligible for monetary awards](#) ranging from 10% to 30% of that relief. Since the Program’s inception, tips have resulted in more than \$2 billion in financial relief, and more than \$500 million in related whistleblower awards. These figures include the recent record award of nearly [\\$50 million](#) to a single whistleblower on June 4, 2020. Some have attributed the surge in TCRs to a combination of increasingly rich award sums, potential TCR filers’ being emboldened by their remote work environments and/or harboring increasing frustration over their job or financial situations, and enmity by furloughed or terminated employees.

Regardless of its cause, the increase in TCRs means that issuers and regulated entities should evaluate their internal reporting processes, hotlines, and whistleblowing policies to ensure they are optimized for the current situation. Such policies should describe the types of issues the policy covers; establish a mechanism for raising concerns through internal channels or hotlines; address anonymity, confidentiality, and existing anti-retaliation measures; and explain the process that will occur upon receipt of a report. Companies maintaining hotlines or other internal reporting mechanisms should establish a protocol for handling these reports, including documenting all steps from the initial report through its thorough investigation and resolution.

BCLP regularly counsels clients on all concerns surrounding whistleblower risks, policies, and procedures.

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