

SEC: Companies Cannot Stifle Whistleblowers in Confidentiality Agreements

Agency Announces First Whistleblower Protection Case Involving Restrictive Language

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Washington D.C., April 1, 2015 — The Securities and Exchange Commission today announced its first enforcement action against a company for using improperly restrictive language in confidentiality agreements with the potential to stifle the whistleblowing process.

The SEC charged Houston-based global technology and engineering firm KBR Inc. with violating whistleblower protection Rule 21F-17 enacted under the Dodd-Frank Act. KBR required witnesses in certain internal investigations interviews to sign confidentiality statements with language warning that they could face discipline and even be fired if they discussed the matters with outside parties without the prior approval of KBR's legal department. Since these investigations included allegations of possible securities law violations, the SEC found that these terms violated Rule 21F-17, which prohibits companies from taking any action to impede whistleblowers from reporting possible securities violations to the SEC.

KBR agreed to pay a \$130,000 penalty to settle the SEC's charges and the company voluntarily amended its confidentiality statement by adding language making clear that employees are free to report possible violations to the SEC and other federal agencies without KBR approval or fear of retaliation.

"By requiring its employees and former employees to sign confidentiality agreements imposing pre-notification requirements before contacting the SEC, KBR potentially discouraged employees from reporting securities violations to us," said Andrew J. Ceresney, Director of the SEC's Division of Enforcement. "SEC rules prohibit employers from taking measures through confidentiality, employment, severance, or other type of agreements that may silence potential whistleblowers before they can reach out to the SEC. We will vigorously enforce this provision."

According to the SEC's order instituting a settled administrative proceeding, there are no apparent instances in which KBR specifically prevented employees from communicating with the SEC about specific securities law violations. However, any company's blanket prohibition against witnesses discussing the substance of the interview has a potential chilling effect on whistleblowers' willingness to report illegal conduct to the SEC.

"KBR changed its agreements to make clear that its current and former employees will not have to fear termination or retribution or seek approval from company lawyers before contacting us." said Sean McKessy, Chief of the SEC's Office of the Whistleblower. "Other employers should similarly review and amend existing and historical agreements that in word or effect stop their employees from reporting potential violations to the SEC."

Without admitting or denying the charges, KBR agreed to cease and desist from committing or causing any future violations of Rule 21F-17.

The SEC's investigation was conducted by Jim Etri and Rebecca Fike and supervised by David L. Peavler of the Fort Worth Regional Office.

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