

ALERTS

Corporate And Labor And Employment Law Alert - SEC Wants Publicly Traded Companies To Remove 'No Further Recovery' Promise From Severance Agreements

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The U.S. Securities and Exchange Commission (SEC) recently brought enforcement actions against two public company employers under Rule 21F-17 based on language in severance agreements by which an employee acknowledged the right to make a complaint or charge with the SEC (as well as other federal administrative agencies), but waived any monetary recovery in connection with such complaint or charge. Those enforcement actions settled with combined fines exceeding \$500,000, requiring the companies to remove the “no further recovery” provisions from future agreements and to provide notice to former employees that their waiver would not be enforced by the company. See one such settlement [here](#).

The SEC has taken a very clear stance: requiring employees to waive any monetary recovery in connection with a complaint or charge is a violation of SEC whistleblower provisions, specifically Rule 21F-17 which provides, in part, “No person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing or threatening to enforce, a confidentiality agreement...with respect to such communications.”

The SEC settlement removes the offending language from severance agreements. Importantly, the publicly traded employer is now required to contact former employees to let them know the company will not enforce the “no further recovery” provision. Given this signal that the SEC intends to vigorously enforce Rule 21F-17, public employers should make immediate changes to severance and release agreements. Of additional concern is the possibility that other governmental agencies, notably the EEOC, will take a similar stance against monetary recovery waivers. Although the EEOC does not provide whistleblower information awards in the same way as the SEC, employers should closely monitor activity in this area.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or a chair of the firm's [Labor and Employment Law](#) and [Corporate](#) departments: Kenneth Yerkes (Labor and Employment) at ken.yerkes@btlaw.com or 317-231-7513 or Tracy Larsen (Corporate) at tracy.larsen@btlaw.com or 616-742-3931.

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