

## Sweet New Deal for Whistleblowers on Foreign Corrupt Practices

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On July 21, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). I believe that Dodd-Frank will encourage both legitimate and baseless reports on foreign corrupt practices.

The Foreign Corrupt Practices Act ("FCPA") deems some overseas activities, like bribing foreign officials, anticompetitive and prohibits them. Dodd-Frank offers substantial financial rewards for qualified FCPA whistleblowers, while strengthening their protection against retaliation on the job.

Dodd-Frank promises a bounty to FCPA whistleblowers who provide "original information" to the SEC. If the SEC imposes sanctions over \$1 million after the tip, a qualified whistleblower will get between 10% and 30% of the sanction imposed. That's a guaranteed 10% commission if the SEC catches a big fish. An employee who is disenchanted with your company might happily tip off the SEC hoping to score a piece of the action.

Here's the real kicker—Dodd-Frank might protect whistleblowers from on-the-job retaliation no matter how ridiculous the complaint. Imagine this scenario that could arguably happen with Dodd-Frank. Your employee *fabricates* an FCPA complaint, hands it to the SEC and your HR department, and wins a federal lawsuit against you for later firing him for blowing the whistle. Disgruntled and poorly performing employees of the world rejoice.

Even before Dodd-Frank, Sarbanes-Oxley protected whistleblowers against retaliation for reporting an alleged FCPA violation. Sarbanes-Oxley, however, required the whistleblower to have a "reasonable belief" that your company had violated the FCPA. Companies used this requirement to defeat retaliation claims based on fabricated and marginal FCPA complaints. Dodd-Frank, however, drops the words "reasonable belief."



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[Employee Manual](#)

[Foreign Corrupt Practices Act \(FCPA\)](#)

[Retaliation](#)

Your company can push back:

- Train your employees about their obligations under the FCPA;
- Make sure your employee manual outlines a channel to report FCPA violations and prohibits retaliation for making a report; and
- Vigilantly document all your employees' performance, so that you can point to prior poor performance as a basis for terminating an employee who fabricates an FCPA violation to save his job.

