

Whistleblower Protections Under the Anti-Money Laundering Act (AMLA)

by Jason Zuckerman and Matt Stock, Zuckerman Law, with Practical Law Labor & Employment

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A Practice Note describing the whistleblower protection and reward program under the Anti-Money Laundering Act of 2020 (AMLA) (31 U.S.C. § 5323), as amended by the Consolidated Appropriations Act, 2023 in December 2022 (HR 2617, P.L. 117-328). This Note discusses whistleblower awards available to individuals reporting violations of the Bank Secrecy Act (BSA) and sanctions violations, including the AMLA's scope of coverage, the information qualifying individuals for an award, and the award calculations and procedures. This Note also discusses the anti-retaliation whistleblower protections under the AMLA, including information about protected activity, adjudicating retaliation claims, and available remedies. This Note covers federal law. State and local law may provide additional whistleblower and anti-retaliation protections for employees.

Until 2021, the US Department of Treasury (Treasury) had a relatively weak whistleblower reward program in effect. The program allowed the Secretary of the Treasury (Secretary) to pay an award to an individual who provided original information about a Bank Secrecy Act (BSA) violation leading to the recovery of a criminal fine, civil penalty, or forfeiture exceeding \$50,000. Awards were capped at the lesser of \$150,000 or 25% of the net amount of the fine, penalty, or forfeiture collected and the Secretary's decision to pay an award was discretionary. The modest award cap failed to encourage whistleblowers to jeopardize their careers by reporting BSA violations.

On January 1, 2021, Congress enacted the Anti-Money Laundering Act of 2020 (AMLA), which amends and builds on the existing anti-money laundering statutory framework originally established under the BSA in 1970 (National Defense Authorization Act, 2021, Div. F, Title LXIII (P.L. 116-283 (Jan. 1, 2021))). Section 6314 of the AMLA, codified at 31 U.S.C. § 5323, creates a whistleblower reward program and provides protection against retaliation. In December 2022, Congress further strengthened the AMLA's reward program by setting a minimum recovery amount for successful whistleblowers and expanding it to cover disclosures about sanctions violations under other statutes (Section 401 of the Consolidated Appropriations Act, 2023 (CAA-23), Div. AA (Financial Service Matters), Title IV, § 401 (P.L. 117-328 (Dec. 29, 2022))).

This Note provides an overview of the protections afforded to whistleblowers under the BSA, as amended by the AMLA, and as further amended by the CAA-23. It addresses:

- The whistleblower reward program, including:
 - individuals covered by the program; and
 - the information needed to qualify for an award.
- The factors used in determining the amount of an award.
- Whistleblower anti-retaliation protections under the AMLA.
- The procedures for bringing an anti-retaliation claim under the AMLA.
- The anti-retaliation remedies available for whistleblowers.

For information about whistleblower protections under other federal laws, see Practice Notes:

- [Whistleblower Complaints Under the Occupational Safety and Health Act.](#)
- [Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act.](#)
- [Whistleblower Protections Under the IRS Reward Program and Taxpayer First Act \(TFA\).](#)

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- [Whistleblower Protections Under the Whistleblower Protection Act](#).
- [Whistleblower Protections Under the National Defense Authorization Act](#).

For information on retaliation generally, see [Practice Note, Retaliation](#) and [Standard Document, Anti-Retaliation Policy](#).

Overview of AMLA Whistleblower Reward Program

Under the AMLA whistleblower reward program, the Secretary pays an award of between 10% and 30% of collected proceeds for whistleblower disclosures that lead to enforcement actions with sanctions in excess of \$1 million for violations of the BSA (money laundering) or for sanctions violations under:

- The International Emergency Economic Powers Act (50 U.S.C. §§ 1701 to 1708).
- Sections 5 and 12 of the Trading With the Enemy Act (50 U.S.C. §§ 4305 and 4312).
- The Foreign Narcotics Kingpin Designation Act (21 U.S.C. §§ 1901 to 1908).

The Secretary has not yet adopted regulations implementing the AMLA whistleblower reward program.

Whistleblowers may submit disclosures about:

- BSA violations to the Financial Crimes Enforcement Network (FinCEN), a Treasury bureau that safeguards the financial system from illicit use, combats money laundering and its related crimes including terrorism, and promotes national security by collecting, analyzing, and disseminating financial intelligence.
- Sanctions violations to the Office of Foreign Assets Control (OFAC), a Treasury agency that administers and enforces economic and trade sanctions.

Employers Covered by the BSA

The BSA's requirements apply to a broad range of employers, although the reporting and registration requirements vary widely and there are significant exemptions from certain reporting requirements. For purposes of the AMLA whistleblower program, the BSA applies to:

- An insured bank.
- A commercial bank or trust company.

- A private banker.
- An agency or branch of a foreign bank operating in the US.
- A credit union.
- A thrift institution.
- A broker or dealer registered under the Securities Exchange Act of 1934.
- A securities or commodities broker or dealer.
- An investment banker or investment company.
- A currency exchange.
- An issuer, a redeemer, or a cashier of travelers' checks.
- An insurance company.
- A dealer in precious metals, stones, or jewels.
- A pawnbroker.
- A loan or finance company.
- A travel agency.
- Automobile, airplane, and boat dealers.
- A casino with an annual gaming revenue of more than \$1 million.
- Operators of credit card systems.
(31 U.S.C. § 5312.)

The sanctions laws apply to all US persons, including financial institutions and companies engaging in commercial transactions outside the US.

For more information on the BSA and AMLA regulatory requirements, see [Practice Note, US Anti-Money Laundering and Trade Sanctions Rules for Financial Institutions](#).

Eligible Whistleblowers

The AMLA authorizes the payment of an award to a whistleblower (31 U.S.C. § 5323(b)). It defines whistleblower as any individual who provides, or two or more individuals acting jointly who provide, information relating to a violation of the BSA to any of:

- Their employer, including as part of their job duties.
- The Secretary.
- The Attorney General.

(31 U.S.C. § 5323(a)(5)(A).)

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Any whistleblower may seek an award under Section 5323, except a whistleblower who:

- Is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award.
- Fails to submit information to the Secretary or the Attorney General in the form required by the rules governing the AMLA whistleblower program.
- Was acting in the normal course of their job duties and is, or was when the whistleblower acquired the original information submitted to the Secretary or the Attorney General, a member, officer, or employee of:
 - an appropriate regulatory or banking agency;
 - Treasury or the US Department of Justice (DOJ); or
 - a law enforcement agency.

(31 U.S.C. § 5323(c)(2).)

A whistleblower also is ineligible for an award if they either:

- Knowingly and willfully make any false, fictitious, or fraudulent statement or representation.
- Knowingly use any false writing or document to seek an award.

(31 U.S.C. § 5323(h).)

Voluntary Whistleblowing Qualifying for an Award

In any covered judicial or administrative action or related action, the Secretary must pay an award or awards to one or more whistleblowers where both:

- The individual or individuals voluntarily provided original information to:
 - their employer;
 - the Secretary; or
 - the Attorney General.
- The original information led to the successful enforcement of the covered judicial or administrative action or related action.

The aggregate award must be both:

- Not less than 10% of the total monetary sanctions collected in the action or related actions.
- Not more than 30% of the total monetary sanctions collected in the action or related actions.

(31 U.S.C. § 5323(a), (b).)

Because whistleblowing that qualifies for an award must be voluntary, an individual reporting violations to the Secretary or Attorney General in response to a subpoena or providing compelled testimony is ineligible for an award.

Covered Judicial or Administrative Action

Under the AMLA, a covered judicial or administrative action is any judicial or administrative action brought by the Secretary or the Attorney General resulting in monetary sanctions exceeding \$1 million for either:

- A violation of the BSA.
- Sanctions violations under the enumerated statutes (see Overview of AMLA Whistleblower Reward Program).

(31 U.S.C. § 5323(a)(1).)

Original Information

To qualify for a whistleblower award under the AMLA, the whistleblower must provide original information, which is information that is all of the following:

- Derived from the whistleblower's independent knowledge or analysis.
- Not known to the Secretary or the Attorney General from any other source, unless the whistleblower is the original source of the information.
- Not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

(31 U.S.C. § 5323(a)(3).)

For more about what constitutes original information under other whistleblower statutes, see [Practice Notes, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: Original Information and Whistleblower Protections Under the IRS Reward Program and Taxpayer First Act \(TFA\): Original Source of Information](#).

Monetary Sanctions

The AMLA defines monetary sanctions resulting from a whistleblower disclosure for which the whistleblower can qualify for an award as “any monies, including penalties, disgorgement, and interest, ordered to be paid” but excluding:

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- Forfeiture.
- Restitution.
- Any victim compensation payment.

(31 U.S.C. § 5323(a)(2).)

Related Action

In addition to qualifying for an award from a judicial or administrative action brought by the Secretary or Attorney General, a whistleblower also may qualify for an award based on the recovery of monetary sanctions in a related action. A related action:

- Is a judicial or administrative action brought by:
 - any appropriate federal authority;
 - a state attorney general in connection with any criminal investigation; or
 - any appropriate state regulatory authority.
- Must be based on the original information provided by the whistleblower leading to the successful enforcement action taken by the Secretary or the Attorney General.

(31 U.S.C. §§ 5323(a)(4) and (g)(4)(D)(i).)

The Secretary may pay an award below the 10% minimum set by the statute when a whistleblower may be paid an award by another whistleblower reward program (31 U.S.C. § 5323(b)(2)(B)).

Anonymous Whistleblowing and the Right to Counsel

A whistleblower may be represented by counsel. If the whistleblower seeks to submit information anonymously, the whistleblower must be represented by counsel. However, a whistleblower must disclose their identity to the Secretary before any award is paid. (31 U.S.C. § 5323(d).)

AMLA Award Payments

Determining the Award Amount

The Secretary has the discretion to determine the amount of the award (subject to the statutory minimum and maximum range) based on various factors, including:

- How significant the information provided by the whistleblower is to the success of the covered judicial or administrative action.
- The degree of assistance provided by the whistleblower.

- The Secretary's programmatic interest in deterring the violations that the whistleblower disclosed.
- Any additional relevant factors the Secretary may establish by regulation.

(31 U.S.C. § 5323(c).)

The presence and significance of any positive factors may increase the award from the 10% minimum while any negative factors may decrease the award.

Source of Award Payments

AMLA whistleblower awards are paid from the Financial Integrity Fund (FIF). The FIF is a revolving fund into which monetary sanctions collected by the Secretary or Attorney General in any judicial or administrative action resulting from an AMLA whistleblower disclosure are deposited.

(31 U.S.C. § 5323(b)(3).)

Appealing the Award

A whistleblower may appeal the Secretary's determination about whether and to whom to grant an award to the appropriate US Court of Appeals not more than 30 days after the Secretary issues a determination. However, the determination of the amount of the award (if made within the AMLA's statutory parameters) is not appealable.

(31 U.S.C. § 5323(f).)

AMLA Whistleblower Protections Against Retaliation

Before the AMLA's enactment, no federal statute specifically protected employee disclosures about money laundering. The Sarbanes-Oxley Act (SOX) offered a limited remedy where the reported money laundering fell within the jurisdiction of the Securities and Exchange Commission (SEC) (such as violations of SEC broker-dealer money laundering rules) and the employee qualified as a covered employee under the law (generally employees of public companies). Some state whistleblower statutes also provided protection.

Subsection (g) of the AMLA now provides robust protections against retaliation for whistleblowers (31 U.S.C. § 5323(g)). The AMLA's anti-retaliation protections apply regardless of whether the individual qualifies for a whistleblower award or provides original information.

AMLA's anti-retaliation provisions are modeled on similar provisions in SOX and the Taxpayer First Act

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(TFA) (18 U.S.C. § 1514A(a) and 26 U.S.C. § 7623(d)). In contrast to the Dodd-Frank Act, the AMLA anti-retaliation provisions:

- Do not require external reporting.
- Protect whistleblowers who only report wrongdoing internally to their employer.

(See 15 U.S.C. § 78u-6(a)(6) (Dodd-Frank provision requiring reporting to the SEC).)

For more information on SOX and Taxpayers First Act whistleblower protections, see [Practice Notes, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act](#) and [Whistleblower Protections Under the IRS Reward Program and Taxpayer First Act \(TFA\)](#).

The US Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) is responsible for enforcing the AMLA's anti-retaliation provisions (see [OSHA: Statutes](#)). The DOL has not yet issued regulations implementing the AMLA whistleblower protection provisions. For more about the AMLA's anti-retaliation protections, see [OSHA Whistleblower Protection for Reporting Money Laundering Fact Sheet](#).

Covered Individuals Under the AMLA Whistleblower Protection Provision

A whistleblower includes any individual, or two or more individuals acting jointly, who engage in protected whistleblowing under the AMLA (31 U.S.C. § 5323(a)(5)). However, the AMLA whistleblower protection provision does not apply to any employer subject to Section 33 of the Federal Deposit Insurance Act (12 U.S.C. § 1831j) or Section 213 or 214 of the Federal Credit Union Act (12 U.S.C. §§ 1790b and 1790c). In other words, employees of federal credit unions and FDIC-insured banks are excluded from AMLA's whistleblower protections. (31 U.S.C. § 5323(g)(6).)

Protected Activity Under the AMLA

The scope of protected whistleblowing under the AMLA is very broad. The AMLA prohibits retaliation against an employee who either:

- Provides information regarding any conduct that the whistleblower reasonably believes violates:
 - any law, rule, or regulation subject to Treasury's jurisdiction; or
 - 18 U.S.C. Sections 1956, 1957, and 1960, which are anti-money laundering statutes, and their implementing rules and regulations.

- Initiates, testifies, participates, or assists in any investigation or judicial or administrative action by Treasury or the DOJ based on or related to those violations.

(31 U.S.C. § 5323(g)(1).)

To qualify as protected activity, the employee must report the information or provide assistance either:

- Externally, to:
 - Treasury;
 - a federal regulatory or law enforcement agency;
 - any Member of Congress or Congressional committee; or
 - the DOJ.
- Internally, to:
 - a supervisor; or
 - anyone working for the employer authorized to investigate, discover, or terminate misconduct or take any other action to address the misconduct.

(31 U.S.C. § 5323(g)(1)(A).)

Adverse Employment Actions Constituting Retaliation

The AMLA prohibits retaliation against a whistleblower because of any lawful act done by the whistleblower. Retaliation includes:

- Discharge.
- Demotion.
- Suspension.
- Threats.
- Blacklisting.
- Harassment.
- Any other discrimination in the terms and conditions of employment or post-employment.

(31 U.S.C. § 5323(g)(1).)

Case law interpreting unfavorable personnel actions under SOX may inform interpretations under the AMLA. For more on adverse employment actions under SOX, see [Practice Note, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: Adverse Employment Actions Constituting Retaliation](#).

Reasonable Belief

The AMLA's anti-retaliation provisions protect a whistleblower for providing information regarding any conduct the whistleblower "reasonably believes" constitutes a violation of any law, rule, or regulation subject to Treasury's jurisdiction (31 U.S.C. § 5323(g)(1)(C)). Because SOX and the TFA include a similar reasonable belief requirement, precedent construing the reasonable belief standard under those statutes is likely persuasive authority when interpreting the AMLA's requirements. To demonstrate that an employee has a reasonable belief, the employee must have both:

- **A subjectively reasonable belief.** The employee must actually believe that the reported conduct violated the relevant law or regulation.
- **An objectively reasonable belief.** The employee's personal belief that the protected activity violated the law or regulation must be reasonable to a person in the same circumstances with the same training and experience as the employee. However, an employee's activity may be protected even if their belief was mistaken about whether the conduct actually violated the law or regulation.

(See, for example, Procedures for the Handling of Retaliation Complaints Under the TFA, 87 Fed. Reg. 12577 (Mar. 7, 2022); see also [Practice Notes, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: Reasonable Belief](#) and [Whistleblower Protections Under the IRS Reward Program and Taxpayer First Act \(TFA\): Reasonable Belief](#).)

Whistleblower Adjudication Under the AMLA

The AMLA creates a private right of action for individuals alleging they suffered an adverse employment action for engaging in protected AMLA whistleblowing. Individuals complaining of retaliation for disclosing money laundering or sanctions violations must exhaust administrative remedies before proceeding in court. For more about the exhaustion of administrative remedies generally, see [Practice Note, Exhaustion of Administrative Remedies and Statutes of Limitations Under Employment Discrimination Laws](#).

The exhaustion requirements and some other adjudication procedures under the AMLA are similar to the requirements for bringing whistleblower claims under SOX and the TFA (though the statute of limitations under AMLA is shorter than under those statutes).

Cases interpreting those statutory procedures may therefore be relevant when interpreting AMLA claims. For more information, see [Practice Notes, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: Whistleblower Adjudication Under SOX](#) and [Whistleblower Protections Under the IRS Reward Program and Taxpayer First Act \(TFA\): Whistleblower Adjudication Under the TFA](#).

Exhaustion of Administrative Remedies and OSHA Proceedings

Before filing a lawsuit in court, a whistleblower with an AMLA retaliation claim must file a complaint with the Secretary of Labor within 90 days after becoming aware of the alleged violation (31 U.S.C. § 5323(g)(2)(A) and (3)(A)(i); 49 U.S.C. § 42121(b)(1)).

Although the DOL has not yet issued implementing regulations, according to OSHA, an individual or their representative may file an AMLA complaint:

- By visiting or calling their local OSHA office.
- By sending a written complaint to the nearest OSHA office.
- By filing a complaint online.
- Without using any particular form.
- In any language.

(OSHA Fact Sheet: [Whistleblower Protection for Reporting](#).)

OSHA Investigation

OSHA will investigate an AMLA retaliation complaint according to the procedures required by 29 C.F.R. Part 1979 (Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21), 29 C.F.R. §§ 1979.100 to 1979.114).

If OSHA finds reasonable cause to conclude that unlawful retaliation occurred, OSHA will issue an order requiring the employer, as appropriate:

- To reinstate the whistleblower.
- Pay two times the complainant's lost wages.
- Restore benefits.
- Provide other relief.

The reasonable cause standard means there is sufficient evidence for OSHA to believe that the complainant may succeed in proving a violation at an ALJ or a district court

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hearing, but is somewhat lower than the preponderance of the evidence standard that applies at a hearing. A reasonable cause determination:

- Requires evidence supporting each element of a violation.
- Requires consideration of the evidence provided by both the complainant and respondent.
- Does not require that OSHA:
 - necessarily resolve all conflicting evidence; or
 - make conclusive credibility determinations.

(OSHA Instruction CPL 02-03-011, [Whistleblower Investigations Manual](#) (Apr. 29, 2022), pp. 23-24.)

If OSHA's investigation does not establish that there is reasonable cause to believe that retaliation occurred, it will dismiss the complaint. After OSHA issues its findings, the employer or the whistleblower may request a hearing on the record before a DOL administrative law judge (ALJ). The parties may appeal an ALJ's decision to the DOL's Administrative Review Board (ARB). The ARB's decision is subject to review by the Secretary of Labor, and a final decision may be appealed to the United States Court of Appeals for the circuit in which the violation occurred.

Burden of Proof

The AMLA incorporates the burden of proof and other procedures under the AIR21 (31 U.S.C. § 5323(g)(3)(A); 49 U.S.C. § 42121).

To prevail on a retaliation claim under Section 5323(g), the whistleblower employee must make a prima facie showing that their protected behavior was a contributing factor in the employer's retaliatory action. An employer may defeat this prima facie claim by showing with clear and convincing evidence that it would have taken the same employment action regardless of the whistleblower's protected activity. (31 U.S.C. § 5323(g)(3)(A); 49 U.S.C. § 42121(b).)

For more about the interpretation of similar standards under other federal whistleblower laws, see [Practice Note, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: Contributing Factor in Employment Decision and Employer's Burden of Proof and Defenses](#).

Litigating an AMLA Retaliation Claim in Federal Court

A whistleblower may file an AMLA retaliation claim in federal district court if both:

- The Secretary of Labor does not issue a final decision within 180 days of filing the complaint.
- There is no showing that the employee's bad faith caused the delay.

(31 U.S.C. § 5323(g)(3)(A)(i).)

Statute of Limitations

A claimant must bring an AMLA retaliation claim in federal court not more than:

- Six years after the prohibited retaliation occurs.
- Three years after facts material to the right of action are known, or reasonably should have been known, by the employee alleging retaliation, but not more than ten years after the violation occurs.

(31 U.S.C. § 5323(g)(3)(B)(ii).)

Right to Jury Trial Under the AMLA

The AMLA expressly provides that a whistleblower alleging an AMLA retaliation claim is entitled to a jury trial (31 U.S.C. § 5323(g)(3)(B)(i)). Lawmakers likely included this provision in response to decisions under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) holding that a jury trial was not available for Dodd-Frank retaliation claims because the statute was silent on the issue (see [Practice Note, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: No Right to Jury Trial Under Dodd-Frank](#)). In contrast, Section 806 of SOX explicitly entitles whistleblowers to a jury trial (see [Practice Note, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: Right to Jury Trial Under SOX](#)).

Remedies Under the AMLA

Prevailing whistleblowers under the AMLA are entitled to:

- Reinstatement with the same seniority status the employee would have had but for the retaliation (or front pay in lieu of reinstatement when reinstatement is not feasible).
- Twice the amount of back pay otherwise owed to the individual, with interest.
- Compensatory damages, including:
 - litigation costs;
 - expert witness fees; and
 - attorneys' fees.
- Any other appropriate remedy.

(31 U.S.C. § 5323 (g)(3)(C).)

Arbitration of AMLA Whistleblower Claims

Employers cannot require employees to arbitrate AMLA whistleblower retaliation claims. The statute specifically prohibits:

- The waiver of rights or remedies under Section 5323 by any:
 - agreement;
 - policy form; or
 - condition of employment.
- The enforcement of any predispute arbitration agreement requiring arbitration of any dispute under Section 5323.

(31 U.S.C. § 5323(j).)

This language is virtually identical to the SOX anti-arbitration provisions (see [Practice Note, Whistleblower Protections Under Sarbanes-Oxley and the Dodd-Frank Act: Arbitration of Whistleblower Claims](#)).

Best Practices for Addressing Whistleblowing in the Workplace

Policies and Training

Employers covered by the BSA should add information about the AMLA anti-retaliation provisions and remedies to existing whistleblower policies and training. Managers and supervisors should also be trained to keep detailed records of employee performance (see [Best Practices for Employee Discipline Checklist](#) and [Standard Document, Employee Counseling Form](#)).

For sample whistleblower training materials, see [Standard Document, Whistleblower Reporting: Presentation Materials](#).

Advantages of Maintaining a Whistleblower Policy

Whistleblower policies that are well drafted and effectively implemented can:

- Reduce the risk that fraud and other malfeasance go undiscovered.
- Enhance a company's reputation by demonstrating that as an employer it values identifying and remedying malfeasance.

- Encourage employees to report money laundering and sanctions violations internally, thereby providing an opportunity for employers to promptly halt and remediate violations. Because the AMLA and other whistleblower reward programs incentivize reporting to the government, employers should maintain effective internal systems to encourage internal reporting.
- Help instill consumer and market confidence in a company.
- Provide procedures for employers to promptly investigate and respond to employee complaints and remind them to be cautious if taking any adverse action against employees who report violations.

Recent developments underscore the risks entailed in failing to respond appropriately to whistleblowers disclosures. For example, in February 2023, the SEC imposed a \$35 million penalty on Activision for its failure to implement necessary controls to collect and review employee complaints about workplace misconduct (see [SEC Release No. 96796](#) (Feb. 3, 2023)). In January 2023, the Delaware Court of Chancery similarly emphasized that corporate officers have “an obligation to make a good faith effort to put in place reasonable information systems” so that management and the board can address the critical risks facing the company and cannot “consciously ignore red flags indicating that the corporation [is] going to suffer harm” (*In Re McDonald's Corp. S'Holder Litig.*, 2023 WL 387292, at *2 (Del. Ch. Jan. 26, 2023)).

Responding Appropriately to Internal Whistleblower Disclosures

When an employee raises a concern about unlawful conduct, the employer should take the complaint seriously and immediately investigate. Depending on the findings of an investigation, the employer should evaluate whether it has a duty to disclose the information to the government. The Department of Justice's February 2023 Voluntary Self-Disclosure Policy provides strong incentives for corporations to self-report violations, including a reduction in a criminal fines (see [DOJ: Voluntary Self-Disclosure Policy](#)).

The employer should ensure that the company's internal processes result in the complaint reaching the highest levels of management, such as the CEO or board of directors. An employer may also benefit from commissioning an independent investigation of the complaint by a neutral factfinder. The employer should follow up with the employee (if the employee's

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identity is known) to find and fix any impropriety that is identified. The employer must not retaliate against the employee, even if the claim is meritless. For more on handling employee complaints, see [Standard Document, Responding to Employee Concerns: Supervisor Guidelines and Conducting Internal Investigations: Addressing Employee Complaints and Compliance Issues Toolkit](#).

Employers should exercise caution if taking any adverse personnel action against employees who have reported corporate wrongdoing, including money laundering, sanctions violations, or other financial crimes. Actions taken in close temporal proximity to an employee's

reporting are more suspect and subject to greater scrutiny. Employers taking any adverse employment action against employees who have recently reported conduct covered by the AMLA should:

- Ensure the decision is supported by a legitimate business justification.
- Clearly and objectively document the action taken and reasons supporting it.
- Review their past practices to ensure the employee is treated consistently with similarly situated employees.

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