

Federal financial reform puts wind in whistleblowers' sails.

Do you know all of your company's dirty little secrets? Thanks to financial reform, it's important that you do.

Among the many provisions in the Wall Street Reform and Consumer Protection Act are beefed-up incentives and protections for whistleblowers, or people who report wrongdoing to authorities.

The reform is controversial, but there's broad agreement that the stakes are higher than ever.

"This is a wake-up call for companies that do not have robust whistleblower programs in place right now," said Tonya Mitchem Grindon, a Nashville attorney with Baker Donelson Bearman Caldwell & Berkowitz who spoke before the U.S. Securities and Exchange Commission on the topic.

The act applies only to public companies. But it raises an issue that has already affected businesses in Middle Tennessee and includes management, shareholders, employees and the broader public as stakeholders.

The act makes it possible for whistleblowers who provide original information leading to enforcement to collect between 10 and 30 percent of any monetary penalty of more than \$1 million. Secondly, it guards employees who serve as whistleblowers against retaliation from management, strengthening protection that already existed to some degree on the state and federal levels.

Executives and attorneys on the corporate side worry incentives will lead employees to bypass mandated internal reporting programs or file frivolous complaints. Martin Zorn, chief administrative officer for Tennessee Commerce — which denied firing former Chief Financial Officer George Fort because of a whistleblower complaint but settled the case — said companies should prevent problems with a culture of doing "the right thing." He also said they should have the chance to remedy issues that come up.

"The SEC should be a second step in my opinion," he said, noting the bank allows for anonymous reporting outside of management to its audit committee.

Mark Chalos, a Nashville attorney with Lieff Cabraser Heimann & Bernstein who has defended whistleblowers, said proper protections and incentives are important because whistleblowers risk their livelihoods to reveal fraud that can be far reaching in its consequences. He said the civil process ultimately roots out frivolous complaints.

"It's not something to be feared," he said. "It's something to be welcomed by any good corporate citizen."

The degree to which the rules will ultimately balance such issues is open; the SEC is still working out the details.

Experts: Take steps to avoid whistleblower issues:

Federal financial reform strengthens the law in regard to whistleblowers and also casts the spotlight on the issue within the business community. Experts on all sides of the debate say there are steps honest business people can take to make sure their companies remain free of the damage a whistleblower case can have on their financial situation or reputation.

- **Do the right thing.** While some companies worry about frivolous complaints, those who strive to do the right thing and have that be part of all levels of a company will have fewer problems.
- **Work with your people.** Companies should be active from day one promoting ethical behavior in all employees, with training that includes a segment on whistleblowing, said **Jeff Bilyeu**, President of Hendersonville security and consulting firm **THE BILYEU GROUP, LLC**. Bilyeu has infiltrated numerous companies to help root out wrongdoing and said most employees will react favorably to a chance to work with their employer to improve a workplace.
- **Give whistleblowers a voice.** Many companies are required to have an internal reporting system, but attorneys and experts on both sides of the debate say such programs are critical for any enterprises large enough to lose track of what's going on. The ability to report anonymously and trust that a complaint will garner serious review is key.
- **Understand the HR part.** Any time an employee is dealt with harshly — a demotion or termination, say — it should be clear why and not appear that there's some illicit reason, said Eric Stevens, a Nashville labor and employment attorney with Miller & Martin who represents companies.

"It's just very important for companies to be proactive," Stevens said.

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